

**Laws passed
at the 1st-
session of the
Legislature of
the State of ...**

South Dakota

Author and Title

South Dakota. Laws, Statutes, etc.
Laws.

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ENABLING ACT AND CONSTITUTION

— AND —

THE LAWS

PASSED AT THE

TENTH SESSION

— OF THE —

LEGISLATURE

— OF THE —

STATE OF SOUTH DAKOTA

Begun and Held at Pierre, the Capital of Said State, on Tuesday,
the Eighth Day of January, 1907, and Concluded
on Friday, the Eighth day of March, 1907

OFFICIAL EDITION

1907
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THE ENABLING ACT

AN ACT to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states.

Section 1. That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana and Washington, respectively, as hereinafter provided.

Sec. 2. The area comprising the territory of Dakota shall, for the purposes of this act, be divided on the line of the 7th standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

Sec. 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assemblies thereof are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories respectively persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionment shall be made by the governor, the chief justice and the secretary of said territories; and the governors of said territories shall by proclamation order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, 1889, which proclamation shall be issued on the fifteenth day of April, 1889; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such conventions issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be 75; and all persons resident in said proposed states, who are qualified voters of said

territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

Sec. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, 1889, and after organization shall declare on behalf of the people of said proposed states, that they adopt the constitution of the United States; whereupon the said conventions shall be, and are hereby authorized to form constitutions and state governments for said proposed states respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide by ordinances irrevocable without the consent of the United States and the people of said states:

First—That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second—That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of congress may prescribe.

Third—That the debts and liabilities of said territories shall be assumed and paid by said states respectively.

Fourth—That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

Sec. 5. That the convention which shall assemble at Bismarck shall form a constitution and state government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and state government for a state to be known as South Dakota; provided, that at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words "For the Sioux Falls Constitution," or the words "Against the Sioux Falls Constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section 3 of this act; and if a majority of all votes cast on this question shall be "For the Sioux Falls Constitution," it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to re-submit to the people of South Dakota, for ratification or rejection, at the

election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the state of South Dakota shall be admitted as a state in the union under said constitution as herein-after provided; but the archives, records and books of the territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "Against the Sioux Falls Constitution," then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, 1889, to proceed to form a constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

Sec. 6. It shall be the duty of the constitutional convention of North Dakota and South Dakota to appoint a joint commission to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota, and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said states shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively.

Sec. 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the state adopting its constitution is admitted into the union, be called by the names of the territory of North Dakota or South Dakota, as the case may be; provided, that if either of the proposed states provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

Sec. 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of 1885, after having amended the same as provided in section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, 1889; but if said constitu-

tional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection, at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon, and upon separate articles or propositions, and a copy of said constitution, articles, propositions and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided, shall be deemed admitted by congress into the union under and by virtue of this act, on an equal footing with the original states from and after the date of said proclamation.

Sec. 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two; and the representatives to the Fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted to the union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

Sec. 10. That upon the admission of each of said states into the union sections numbered 16 and 36 in every township of said proposed states, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; provided, that the 16th and 36th sections embraced in permanent reservations for national purposes shall not, at any time, be subjected to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domain.

Sec. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than \$10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, home-

stead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Sec. 12. That upon the admission of each of said states into the union, in accordance with the provisions of this act, 50 sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby granted to said states for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

Sec. 13. That 5 per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states respectively.

Sec. 14. That the lands granted to the territories of Dakota and Montana by the act of February 18, 1881, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota and Montana, respectively, if such states are admitted into the union as provided in this act, to the extent of the full quantity of 72 sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July 17, 1854, to be reserved for university purposes in the territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March 14, 1864, will make the full quantity of 72 entire sections, are hereby granted in like manner to the state of Washington for the purposes of a university in said state. None of the lands granted in this section shall be sold at less than \$10 per acre; but said lands may be leased in the same manner as provided in section 11 of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for sectarian or denominational school, college or university. The section of land granted by the act of June 16, 1880, to the territory of Dakota, for an asylum for the insane, shall, upon the admission of said state of South Dakota into the union, become the property of said state.

Sec. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March 2, 1881, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the money appropriated therefor by said act, to said state of South Dakota, for the purposes therein designated; and the states of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March 2, 1881, for the territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

Sec. 16. That 90,000 acres of land to be selected and located as provided in section 10 of this act, are hereby granted to each of said states, except to the state of South Dakota, to which 120,000 acres are granted, for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of land for such purposes.

Sec. 17. That in lieu of the grant of lands for purposes of internal improvement made to new states by the eighth section of the act of September 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September 28, 1850, and section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the state of South Dakota: For the school of mines, 40,000 acres; for the reform school, 40,000 acres; for the deaf and dumb asylum, 40,000 acres; for the agricultural college, 40,000 acres; for the university, 40,000 acres; for the state normal schools, 80,000 acres; for public buildings at the capital of said state, 50,000 acres; for such other educational and charitable purposes as the legislature of said state may determine, 170,000 acres; in all 500,000 acres.

To the state of North Dakota a like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, 100,000 acres; for state normal schools, 100,000 acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, 50,000 acres; for the establishment of a state reform school, 50,000 acres; for the establishment of a deaf and dumb asylum, 50,000 acres; for public buildings at the capital of the state, in addition to the grants hereinbefore made for that purpose, 150,000 acres.

To the state of Washington: For the establishment and maintenance of a scientific school, 100,000 acres; for the state normal schools, 100,000 acres; for public buildings at the state capital, in addition to the grant hereinbefore made for that purpose, 100,000 acres; for state, charitable, educational, penal and reformatory institutions, 200,000 acres.

That the states provided for in this act shall not be entitled to any further or other grants of lands for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

Sec. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections 16 and 36, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof, for the use and the benefit of the common schools of said states.

Sec. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

Sec. 20. That the sum of \$20,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of \$40,000 is so appropriated, \$20,000 each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

Sec. 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the Eighth judicial district, except Washington and Montana, which shall be attached to the Ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney and one United States marshal. The judge of each of said districts shall receive a yearly salary of \$3,500, payable in four equal installments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state. The regular terms of said court shall be held in each district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.

Sec. 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said supreme court of the United States. And the mandate of execution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require; provided that the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be directed by the supreme court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the state of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the state of North Dakota, or to the supreme court of the territory of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts herein named shall, respectively, be the successor of the supreme court of the territory as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the union.

Sec. 23. That in respect to all cases, proceedings and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into the union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdic-

tion under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments and proceedings relating to any such cases shall be transferred to such circuit, district and state courts respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the union, but the same shall be transferred and proceeded with in the proper United States circuit, district or state court as the case may be; provided, however, that in all civil actions, causes and proceedings in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request, such cases shall be proceeded with in the proper state courts.

Sec. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the Fifty-first congress; and said state government shall remain in abeyance until the states shall be admitted into the union, respectively, as provided in this act. In case the constitution of any of said proposed states shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States, and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law, and when such state is admitted into the union the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States; and the officers of the state governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories at the time of their admission into the union shall be in force in said states, except as modified or changed by this act or by the constitutions of the states, respectively.

Sec. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories or by congress, are hereby repealed.

CONSTITUTION OF SOUTH DAKOTA

[Adopted by popular vote October 1, 1889. Yeas, 70,131; nays, 3,267]

PREAMBLE

We, the people of South Dakota, grateful to Almighty God for our civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquillity, provide for the common defense, promote the general welfare and preserve to ourselves and to our posterity the blessings of liberty, do ordain and establish this Constitution for the state of South Dakota.

ARTICLE I

Name and Boundary

§ 1. The name of the state shall be South Dakota.

§ 2. The boundaries of the state of South Dakota shall be as follows: Beginning at the point of intersection of the western boundary line of the state of Minnesota, with the northern boundary line of the state of Iowa, and running thence northerly along the western boundary line of the state of Minnesota to its intersection with the 7th standard parallel; thence west on the line of the 7th standard parallel produced due west to its intersection with the 27th meridian of longitude west from Washington; thence south on the 27th meridian of longitude west from Washington to its intersection with the northern boundary line of the state of Nebraska; thence easterly along the northern boundary line of the state of Nebraska to its intersection with the western boundary line of the state of Iowa; thence northerly along the western boundary line of the state of Iowa; thence east along the northern boundary line of the state of Iowa to the place of beginning.

ARTICLE II

Division of the Powers of Government

The powers of the government of the state are divided into three distinct departments—the Legislative, Executive and Judicial; and the powers and duties of each are prescribed by this Constitution.

ARTICLE III

Legislative Department

§ 1. The legislative power shall be vested in a legislature, which shall consist of a senate and house of representatives. Except that the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect (except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions).

Provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the legislature or any member thereof of the right to propose any measure. The veto power of the executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The legislature shall make suitable provisions for carrying into effect the provisions of this section.

[The foregoing section (§1) was submitted in its present form by the Legislature in 1897 as an amendment to the Constitution (Chap. 39, Laws of 1897). It was adopted by the people at the general election held November 8, 1898.]

State ex rel. Lavin et al. vs. Bacon et al., 14 S. D. 284-394.

§ 2. The number of members of the house of representatives shall not be less than seventy-five, nor more than one hundred and thirty-five. The number of members of the senate shall not be less than twenty-five nor more than forty-five.

The sessions of the legislature shall be biennial except as otherwise provided in this Constitution.

§ 3. No person shall be eligible to the office of senator who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have attained the age of twenty-five years, and who shall not have been a resident of the state or territory for two years next preceding his election.

No person shall be eligible to the office of representative who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have been a resident of the state or territory for two years next preceding his election, and who shall not have attained the age of twenty-five years.

No judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder, sheriff or collector of public moneys, member of either house of congress, or person holding any lucrative office under the United States, or this state, or any foreign government, shall be a member of the legislature; **Provided**, that appointments in the militia, the offices of notary public and justice of the peace shall not be considered lucrative; nor shall any person holding any office of honor or profit under any foreign government or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three hundred dollars, hold any office in either branch of the legislature or become a member thereof.

§ 4. No person who has been, or hereafter shall be, convicted of bribery, perjury or other infamous crime, nor any person who has been, or may be collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the legislature or to any office in either branch thereof.

§ 5. The legislature shall provide by law for the enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and even ten years thereafter; and at its first regular session after each enumeration, and also after each enumeration made by authority of the United States, but at no other time, the legislature shall apportion the senators and representatives according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States army and navy. **Provided**, that the legislature may make an apportionment at its first session after the admission of South Dakota as a state.

In re State Census, 6 S. D. 540.

§ 6. The terms of the office of the members of the legislature shall be two years; they shall receive for their services the sum of five dollars for each day's attendance during the session of the legislature, and ten cents for

every mile of necessary travel in going to and returning from the place of meeting of the legislature on the most usual route.

Each regular session of the legislature shall not exceed sixty days, except in cases of impeachment, and members of the legislature shall receive no other pay or perquisites except per diem and mileage.

[The foregoing section (§ 6) was amended at the general election held in November, 1892, by reducing the mileage of the members from "ten" to "five" cents per mile.]

§ 7. The legislature shall meet at the seat of government on the first Tuesday after the first Monday of January at 12 o'clock m., in the year next ensuing the election of members thereof, and at no other time except as provided by this Constitution.

§ 8. Members of the legislature and officers thereof, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of South Dakota, and will faithfully discharge the duties of (senator, representative or officer) according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass, or any other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill or resolution, or appropriation, or for any other official act.

This oath shall be administered by a judge of the supreme or circuit court, or the presiding officer of either house, in the hall of the house to which the member or officer is elected, and the secretary of state shall record and file the oath subscribed by each member and officer.

Any member or officer of the legislature who shall refuse to take the oath herein prescribed shall forfeit his office.

Any member or officer of the legislature who shall be convicted of having sworn falsely to, or violated his said oath, shall forfeit his office and be disqualified thereafter from holding the office of senator or member of the house of representatives or any office within the gift of the legislature.

§ 9. Each house shall be the judge of the election returns and qualifications of its own members.

A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such a manner and under such penalty as each house may provide.

Each house shall determine the rules of its proceedings, shall choose its own officers and employees and fix the pay thereof, except as otherwise provided in this Constitution.

§ 10. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

§ 11. Senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same; and for words used in any speech or debate in either house, they shall not be questioned in any other place.

§ 12. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected, nor shall any member receive any civil appointment from the governor, the governor and senate, or from the legislature during the term for which he shall have been elected, and all such appointments and all votes given for any such members for any such office or appointment shall be void; nor shall any member of the legislature during the

term for which he shall have been elected, or within one year thereafter, be interested, directly or indirectly, in any contract with the state or any county thereof, authorized by any law passed during the term for which he shall have been elected.

Palmer vs. State, 11 S. D. 78.

§ 13. Each house shall keep a journal of its proceedings and publish the same from time to time, except such parts as require secrecy, and the yeas and nays of members on any question shall be taken at the desire of one-sixth of those present and entered upon the journal.

Narregang vs. Brown County et al., 14 S. D. 357.

§ 14. In all elections to be made by the legislature the members thereof shall vote viva voce and their votes shall be entered in the journal.

§ 15. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

§ 16. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 17. Every bill shall be read three several times, but the first and second reading may be on the same day, and the second reading may be by title of the bill, unless the reading at length be demanded. The first and third readings shall be at length.

§ 18. The enacting clause of a law shall be: "Be it enacted by the legislature of the state of South Dakota," and no law shall be passed unless by assent of a majority of all the members elected to each house of the legislature. And the question upon the final passage shall be taken upon its last reading, and the yeas and nays shall be entered upon the journal.

§ 19. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles have been publicly read immediately before signing, and the fact of signing shall be entered upon the journal.

§ 20. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

§ 21. No law shall embrace more than one subject, which shall be expressed in its title.

State vs. Morgan, 2 S. D. 32; State vs. Becker, 3 S. D. 29; State vs. Ayres, 8 S. D. 517; Stuart et al. vs. Kirley et al., 12 S. D. 246.

§ 22. No act shall take effect until ninety days after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the legislature shall by a vote of two-thirds of all the members elected of each house, otherwise direct.

State ex rel. Lavin et al. vs. Bacon et al., 14 S. D. 234-294; Bank vs. Reeves, 13 S. D. 193.

§ 23. The legislature is prohibited from enacting any private or special laws in the following cases:

1. Granting divorces.
2. Changing the names of persons or places, or constituting one person the heir at law of another.
3. Locating or changing county seats.
4. Regulating county and township affairs.
5. Incorporating cities, towns and villages, or changing or amending the charter of any town, city or village, or laying out, opening, vacating or altering town plats, streets, wards, alleys and public ground.
6. Providing for sale or mortgage of real estate belonging to minors or others under disability.
7. Authorizing persons to keep ferries across streams wholly within the state.
8. Remitting fines, penalties or forfeitures.

9. Granting to an individual, association or corporation any special or exclusive privilege, immunity or franchise whatever.

10. Providing for the management of common schools.

11. Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed. But the legislature may repeal any existing special law relating to the foregoing subdivisions.

In all other cases where a general law can be applicable no special law shall be enacted.

Stuart et al. vs. Kirley et al., 12 S. D. 245.

Bon Homme County vs. Berndt et al., 13 S. D. 309.

§ 24. The legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this state, or to any municipal corporation therein.

§ 25. The legislature shall not authorize any game of chance, lottery or gift enterprise, under any pretense, or for any purpose whatever.

§ 26. The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes, or to select a capital site, or to perform any municipal functions whatever.

§ 27. The legislature shall direct by law in what manner and in what courts suits may be brought against the state.

§ 28. Any person who shall give, demand, offer, directly or indirectly, any money, testimonial, privilege or personal advantage, thing of value to any executive or judicial officer or member of the legislature, to influence him in the performance of any of his official or public duties, shall be guilty of bribery and shall be punished in such manner as shall be provided by law.

The offense of corrupt solicitation of members of the legislature, or of public officers of the state, or any municipal division thereof, and any effort toward solicitation of said members of the legislature or officers to influence their official action shall be defined by law, and shall be punishable by fine and imprisonment.

Any person may be compelled to testify in investigation or judicial proceedings against any person charged with having committed any offense of bribery or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, but said testimony shall not afterward be used against him in any judicial proceeding except for bribery in giving such testimony, and any person convicted of either of the offenses aforesaid, shall be disqualified from holding any office or position or office of trust or profit in this state.

ARTICLE IV

Executive Department

§ 1. The executive power shall be vested in a governor, who shall hold his office two years. A lieutenant governor shall be elected at the same time and for the same term.

§ 2. No person shall be eligible to the office of governor or lieutenant governor except a citizen of the United States and a qualified elector of the state, who shall have attained the age of 30 years, and who shall have resided two years next preceding the election within the state or territory; nor shall he be eligible to any other office during the term for which he shall have been elected.

§ 3. The governor and lieutenant governor shall be elected by the qualified electors of the state at the time and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but if two or more shall

have an equal and highest number of votes for governor or lieutenant governor, the two houses of the legislature at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

§ 4. The governor shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States, and may call out the same to execute laws, suppress insurrection and repel invasion. He shall have the power to convene the legislature on extraordinary occasions. He shall, at the commencement of each session, communicate to the legislature by message, information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

§ 5. The governor shall have the power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; **Provided**, that in all cases where the sentence of the court is capital punishment, imprisonment for life, or for a longer term than two years, or a fine exceeding two hundred dollars, no pardon shall be granted, sentence commuted or fine remitted, except upon the recommendation in writing of a board of pardons, consisting of the presiding judge, secretary of state and attorney general, after full hearing in open session, and such recommendation, with the reasons therefor, shall be filed in the office of the secretary of state; but the legislature may by law in all cases regulate the manner in which the remission of fines, pardons, commutations and reprieves, may be applied for. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence or grant a further reprieve. He shall communicate to the legislature at each regular session each case of remission of fine, reprieve, commutation or pardon, granted by him in the cases in which he is authorized to act without the recommendation of the said board of pardons, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

§ 6. In case of death, impeachment, resignation, failure to qualify, absence from the state, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

§ 7. The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy in the office of governor the lieutenant governor shall be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

§ 8. When any office shall from any cause become vacant and no mode is provided by the constitution or law for filling such vacancy, the governor shall have the power to fill such vacancy by appointment.

State ex rel. Holmes vs. Finnerud, 7 S. D. 237; State ex rel. Lavin et al. vs. Bacon et al., 14 S. D. 284-394.

§ 9. Every bill which shall have passed the legislature, shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it with his objection to the house in which it originated, which shall enter the objection at large upon the journal and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objection, to

the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall by its adjournment prevent its return; in which case it shall be filed, with his objection, in the office of the secretary of state, within ten days after such adjournment, or become a law.

§ 10. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in the following manner: If the legislature be in session he shall transmit to the house in which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

§ 11. Any governor of this state who asks, receives or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the legislature shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislature, or who threatens any member that he, the said governor, will remove any person or persons from any office or position with intent to in any manner influence the official action of said member, shall be punished in the manner now, or that may hereafter be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this state.

§ 12. There shall be chosen by the qualified electors of the state at the time and places of choosing members of the legislature, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands, and an attorney general, who shall severally hold their offices for the term of two years, but no person shall be eligible to the office of treasurer for more than two terms consecutively. They shall respectively keep their offices at the seat of government.

§ 13. The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands and attorney general shall be as prescribed by law.

State vs. Becker, 3 S. D. 29.

State vs. Roddle, 12 S. D. 433.

ARTICLE V

Judicial Department

§ 1. The judicial powers of the state, except as in this Constitution otherwise provided, shall be vested in a supreme court, circuit courts, county courts, and justices of the peace, and such other courts as may be created by law for cities and incorporated towns.

§ 2. The supreme court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the

state, and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

City of Huron vs. Campbell, 3 S. D. 309; Vine et al. vs. Jones et al., 13 S. D. 54.

§ 3. The supreme court and the judges thereof shall have power to issue writs of habeas corpus. The supreme court shall also have power to issue writs of mandamus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same in such cases and under such regulations as may be prescribed by law; **Provided, however,** that no jury trials shall be allowed in said supreme court, but in proper cases, questions of fact may be sent by said court to a circuit court for trial before a jury.

Everitt vs. Board County Com. Hughes County et al., 1 S. D. 365; State ex rel. Dollard, Attorney General vs. Bd. Co. Comm. Hughes Co. et al., 1 S. D. 292; In re Ringrose, 9 S. D. 349.

State ex rel. McGee vs. Gardner, 3 S. D. 553.

§ 4. At least two terms of the supreme court shall be held each year at the seat of government.

§ 5. The supreme court shall consist of three judges, to be chosen from districts by qualified electors of the state at large, as hereinafter provided.

§ 6. The number of said judges and districts may after five years from the admission of this state under this Constitution, be increased by law to not exceeding five.

§ 7. A majority of the judges of the supreme court shall be necessary to form a quorum or to pronounce a decision, but one or more of said judges may adjourn the court from day to day, or to a day certain.

§ 8. The term of the judges of the supreme court, who shall be elected at the first election under this Constitution, shall be four years. At all subsequent elections the term of said judges shall be six years.

§ 9. The judges of the supreme court shall by rule select from their number a presiding judge, who shall act as such for the term prescribed by such rule.

§ 10. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age, a citizen of the United States, nor unless he shall have resided in this state or territory at least two years next preceding his election and at the time of his election be a resident of the district from which he is elected; but for the purpose of re-election, no such judge shall be deemed to have lost his residence in the district by reason of his removal to the seat of government in the discharge of his official duties.

Jamleson vs. Wiggin, 12 S. D. 16.

§ 11. Until otherwise provided by law, the districts from which the said judges of the supreme court shall be elected shall be constituted as follows:

First District—All that portion of the state lying west of the Missouri river.

Second District—All that portion of the state lying east of the Missouri river and south of the second standard parallel.

Third District—All that portion of the state lying east of the Missouri river and north of the second standard parallel.

§ 12. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof and who shall hold office during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law, and by the rules of the supreme court not inconsistent with law. The legislature shall make provision for the publication and distribution of the decisions of the supreme court, and for the sale of the published volumes thereof. No private person or corporation shall be allowed to secure any copyright to such decisions, but if any copyrights are secured they shall inure wholly to the benefit of the state.

§ 13. The governor shall have authority to require the opinions of the judges of the supreme court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions.

In re Construction of Constitution, 3 S. D. 548.

§ 14. The circuit courts shall have original jurisdiction of all actions and causes, both at law and in equity, and such appellate jurisdiction as may be conferred by law and consistent with this Constitution; such jurisdiction as to value and amount and grade of offense may be limited by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same.

§ 15. The state shall be divided into judicial circuits, in each of which there shall be elected by the electors thereof one judge of the circuit court therein, whose term of office shall be four years.

§ 16. Until otherwise ordered by law, said circuits shall be eight in number and constituted as follows, viz:

Note—The present status of the several circuits of the state is fixed by Article 5, Chapter 11, Political Code, and Chapter 114 of the Session Laws of 1903.

§ 17. The legislature may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial circuits and the judges thereof, and divide the state into judicial circuits accordingly, taking care that they be formed of compact territory and be bounded by county lines; but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed.

§ 18. Writs of error and appeals may be allowed from the decisions of the circuit courts to the supreme court under such regulations as may be prescribed by law.

County Courts

§ 19. There shall be elected in each organized county a county judge who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

§ 20. County courts shall be courts of record and shall have original jurisdiction in all matters of probate, guardianship, and settlement of estates of deceased persons, and such other civil and criminal jurisdiction as may be conferred by law; **Provided**, that such courts shall not have jurisdiction in any case where the debt, damage, claim or value of property involved shall exceed one thousand dollars, except in matters of probate, guardianship and the estates of deceased persons. Writs of error and appeal may be allowed from county to circuit courts, or to the supreme court in such cases and in such manner as may be prescribed by law; **Provided**, that no appeal or writ of error shall be allowed to the circuit court from any judgment rendered upon an appeal from a justice of the peace or police magistrate for cities or towns.

§ 21. The county court shall not have jurisdiction in cases of felony, nor shall criminal cases therein be prosecuted by indictment; but they may have such jurisdiction in criminal matters, not of the grade of felony, as the legislature may prescribe, and the prosecutions therein may be by information or otherwise as the legislature may provide.

Justice of the Peace

§ 22. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of one hundred dollars, or where the boundaries or title to real property shall be called in question.

Police Magistrate

The following amendment to section 23 of Article V was submitted at the general election that was held November 6, 1906, and was adopted by a vote of 29,417 for, and 18,755 against:

§ 23. The legislature shall have power to provide for creating such police

magistrates for cities and towns as may be deemed from time to time necessary, who shall have jurisdiction of all cases arising under the ordinances of such cities and towns, respectively, and such police magistrates may also be constituted ex-officio justices of the peace for their respective counties. In cities having a population of five thousand or over the legislature may provide, in lieu of police magistrates, for municipal courts, the judges whereof shall be chosen in such manner as the legislature shall prescribe, which courts shall have exclusive original jurisdiction of all cases, both civil and criminal, cognizable before a justice of the peace under the laws of the state, and in which process shall be served within the city where such court is established; and shall also have exclusive original jurisdiction of all cases arising under the ordinances of such city. Such court shall also have jurisdiction co-extensive with the county in which such city is situated, in such civil and criminal cases as may be provided by law.

State vs. Wright, 15 S. D. 628.

State's Attorney

§ 24. The legislature shall have power to provide for state's attorneys and to prescribe their duties and fix their compensation; but no person shall be eligible to the office of attorney general or state's attorney who shall not at the time of his election be at least twenty-five years of age and possess all the other qualifications for judges of circuit courts as prescribed in this article.

Miscellaneous

§ 25. No person shall be eligible to the office of judge of the circuit or county courts unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States; nor unless he shall have resided in this state or territory at least one year next preceding his election, and at the time of his election be a resident of the county or circuit, as the case may be, for which he is elected.

Jamieson vs. Wiggin, 12 S. D. 16.

§ 26. The judges of the supreme court, circuit courts and county courts shall be chosen at the first election held under the provisions of this Constitution, and thereafter as provided by law, and the legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose, and may for the purpose of making such provision, extend or abridge the term of office for any of such judges then holding, but not in any case more than six months. The term of office of all judges of circuit courts, elected in the several judicial circuits throughout the state, shall expire on the same day.

§ 27. The time of holding courts within said judicial circuits and counties shall be as provided by law; but at least one term of the circuit court shall be held annually in each organized county, and the legislature shall make provision for attaching unorganized counties or territory to organized counties for judicial purposes.

§ 28. Special terms of said courts may be held under such regulations as may be provided by law.

§ 29. The judges of the circuit courts may hold courts in other circuits than their own, under such regulations as may be prescribed by law.

Holden vs. Haserodt et al., 3 S. D. 4.

§ 30. The judges of the supreme court, circuit courts and county courts shall each receive such salary as may be provided by law, consistent with this Constitution, and no such judge shall receive any compensation, perquisite or emoluments for or on account of his office in any form whatever, except such salary; **Provided**, that county judges may accept and receive such fees as may be allowed under the land laws of the United States.

§ 31. No judge of the supreme court or circuit court shall act as attorney or counselor at law, nor shall any county judge act as an attorney or

counselor at law in any case which is or may be brought into his court or which may be appealed therefrom.

§ 32. There shall be a clerk of the circuit court in each organized county, who shall also be clerk of the county court, and who shall be elected by the qualified electors of such county. The duties and compensation of said clerk shall be as provided by law and regulated by the rules of the court consistent with the provisions of law.

§ 33. Until the legislature shall provide by law for fixing the terms of courts, the judges of the supreme, circuit and county courts respectively shall fix the terms thereof.

§ 34. All laws relating to courts shall be general and of uniform operation throughout the state, and the organization, jurisdiction, power, proceedings and practice of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments and decrees of such courts severally shall be uniform; **Provided, however,** that the legislature may classify the county courts according to the population of the respective counties and fix the jurisdiction and salary of the judges thereof, accordingly.

McClain vs. Williams, 11 S. D. 60.

§ 35. No judge of the supreme or circuit courts shall be elected to any other than a judicial office, or be eligible thereto, during the term for which he was elected such judge. All votes for either of them during such term for any elective office, except that of judge of the supreme court, circuit court or county court, given by the legislature or the people, shall be void.

§ 36. All judges or other officers of the supreme, circuit or county courts provided for in this article shall hold their offices until their successors respectively are elected or appointed and qualified.

§ 37. All officers provided for in this article shall respectively reside in the district, county, precinct, city or town for which they may be elected or appointed. Vacancies in the elective offices provided for in this article shall be filled by appointment until the next general election as follows: All judges of the supreme, circuit and county courts by the governor. All other judicial and other officers by the county board of the counties where the vacancy occurs; in cases of police magistrates, by the municipality.

In re Supreme Court Vacancy, 4 S. D. 532; State ex rel. McGee vs. Gardner, 3 S. D. 553.

§ 38. All process shall run in the name of the "State of South Dakota." All prosecutions shall be carried on in the name of and by authority of the "State of South Dakota."

State vs. Thompson, 4 S. D. 95.

ARTICLE VI

Bill of Rights

§ 1. All men are born equally free and independent and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

State vs. Scougal, 3 S. D. 55.

§ 2. No person shall be deprived of life, liberty or property without due process of law.

State vs. Scougal, 3 S. D. 55.

§ 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place

of worship against his consent, nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

Synod of Dakota vs. State, 2 S. D. 366.

§ 4. The right of petition, and of the people peaceably to assemble to consult for the common good and make known their opinions, shall never be abridged.

§ 5. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. In all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be sufficient defense. The jury shall have the right to determine the fact and the law under the direction of the court.

Ross vs. Ward, 14 S. D. 240.

§ 6. The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy, but the legislature may provide for a jury of less than twelve in any court not a court of record and for the decision of civil cases by three-fourths of the jury in any court.

Belatti vs. Pierce, 8 S. D. 456.

§ 7. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

State vs. Burchard, 4 S. D. 549.

State vs. Mitchell, 3 S. D. 223.

§ 8. All persons shall be bailable by sufficient sureties, except for capital offenses when proof is evident or presumption great. The privilege of the writ of *habeas corpus* shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it.

§ 9. No person shall be compelled in any criminal case to give evidence against himself or be twice put in jeopardy for the same offense.

State vs. Reddington, 8 S. D. 315.

§ 10. No person shall be held for a criminal offense unless on the presentment or indictment of the grand jury, or information of the public prosecutor, except in cases of impeachment, in cases cognizable by county courts, by justices of the peace, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger. *Provided*, that the grand jury may be modified or abolished by law.

§ 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.

§ 12. No *ex post facto* law, or law impairing the obligation of contracts or making any irrevocable grant or privilege, franchise or immunity, shall be passed.

§ 13. Private property shall not be taken for public use, or damaged, without just compensation as determined by a jury, which shall be paid as soon as it can be ascertained, and before possession is taken. No benefit which may accrue to the owner as the result of an improvement made by any private corporation shall be considered in fixing the compensation for property taken or damaged. The fee of land taken for railroad tracks or other highways shall remain in the owners, subject to the use for which it is taken.

Searle vs. City of Lead, 10 S. D. 312.

Whittaker vs. City of Deadwood et al., 12 S. D. 608.

§ 14. No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment or descent of property.

§ 15. No person shall be imprisoned for debt arising out of or founded upon a contract.

City of Deadwood vs. Allen, 9 S. D. 221.

§ 16. The military shall be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any house without consent of the owner, nor in time of war except in the manner prescribed by law.

§ 17. No tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform.

§ 18. No law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities upon which the same terms shall not equally belong to all citizens or corporations.

§ 19. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers in time of war may vote at their post of duty in or out of the state under regulations to be prescribed by the legislature.

§ 20. All courts shall be open, and every man for an injury done him in his property, person or reputation, shall have remedy by due course of law, and right and justice, administered without denial or delay.

§ 21. No power of suspending laws shall be exercised, unless by the legislature or its authority.

§ 22. No person shall be attainted of treason or felony by the legislature.

§ 23. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

State vs. Becker, 3 S. D. 29.

§ 24. The right of citizens to bear arms in defense of themselves and the state shall not be denied.

§ 25. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

§ 26. All political power is inherent in the people, and all free government is founded on their authority, and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the state of South Dakota is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

§ 27. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

ARTICLE VII

Elections and Right of Suffrage

§ 1. Every male person resident of this state who shall be of the age of twenty-one years and upwards, not otherwise disqualified, belonging to either of the following classes, who shall be a qualified elector under the laws of the territory of Dakota at the date of the ratification of this Constitution by the people, or who shall have resided in the United States one year, in this state six months, in the county thirty days, and in the election precinct where he offers his vote ten days next preceding any election, shall be deemed a qualified elector at such election:

First—Citizens of the United States.

Second—Persons of foreign birth who shall have declared their intention

to become citizens conformably to the laws of the United States upon the subject of naturalization.

Chamberlain vs. Wood et al., 15 S. D. —, 88 N. W. 109.

§ 2. The legislature shall at its first session after the admission of the state into the union submit to a vote of the electors of the state the following question to be voted upon at the next general election held thereafter, namely: "Shall the word 'male' be stricken from the article of the Constitution relating to elections and the right of suffrage?" If a majority of the votes cast upon that question are in favor of striking out said word "male," it shall be stricken out and there shall thereafter be no distinction between males and females in the exercise of the right of suffrage at any election in this state.

Note—The above question was submitted to the people at the election held in November, 1890, and was rejected by the following vote: For, 22,072; against, 45,682.

§ 3. All votes shall be by ballot, but the legislature may provide for numbering ballots for the purpose of preventing and detecting fraud.

§ 4. All general elections shall be biennial.

§ 5. Electors shall in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning from the same. And no elector shall be obliged to do military duty on the days of election, except in the time of war or public danger.

§ 6. No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States.

§ 7. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed therein.

§ 8. No person under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

§ 9. Any woman having the qualifications enumerated in section 1 of this article, as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote at any election held solely for school purposes and may hold any office in this state, except as otherwise provided in this Constitution.

ARTICLE VIII

Education and School Lands

§ 1. The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools, wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

§ 2. All proceeds of the sale of public lands that have heretofore been or may hereafter be given by the United States for the use of public schools in the state; all such per centum as may be granted by the United States on the sales of public lands; the proceeds of all property that shall fall to the state by escheat; the proceeds of all gifts or donations to the state for public schools or not otherwise appropriated by the terms of the gift; and all property otherwise acquired for public schools, shall be and remain a perpetual fund for the maintenance of public schools in the state. It shall be deemed a trust fund held by the state. The principal shall forever remain inviolate, and may be increased, but shall never be diminished, and the state shall make good all losses thereof which may in any manner occur.

§ 3. The interest and income of this fund, together with the net proceeds of all fines for violation of state laws, and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the public schools of the state, and shall be for this purpose apportioned among and between all the several public school corporations of the state in proportion to the number of children in each, of school age, as may be fixed by law; and no part of the fund, either principal or interest, shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of public schools for the equal benefit of all the people of the state.

§ 4. After one year from the assembling of the first legislature, the lands granted to the state by the United States for the use of public schools may be sold upon the following conditions and no other: Not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the state, and the legislature shall, subject to the provisions of this article, provide for the sale of the same.

The commissioner of school and public lands, the state auditor and the county superintendent of schools of the counties severally, shall constitute boards of appraisal and shall appraise all school lands within the several counties which they may from time to time select and designate for sale, at their actual value under the terms of sale.

They shall take care to first select and designate for sale the most valuable lands; and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper subdivision of the same in order that the largest price may be obtained therefor.

§ 5. No land shall be sold for less than the appraised value, and in no case for less than ten dollars an acre. The purchaser shall pay one-fourth of the price in cash and the remaining three-fourths as follows: One-fourth in five years, one-fourth in ten years and one-fourth in fifteen years, with interest thereon at the rate of not less than six per centum per annum, payable annually in advance; but all such subdivided lands may be sold for cash, provided that upon payment of the interest for one full year in advance, the balance of the purchase price may be paid at any time. All sales shall be at public auction to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of not more than eighty acres, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within four years after appraisal, shall be re-appraised by the board of appraisal as hereinbefore provided before they are sold.

§ 6. All sales shall be conducted through the office of the commissioner of school and public lands as may be prescribed by law, and returns of all appraisals and sales shall be made to said office. No sale shall operate to convey any right or title to any lands for sixty days after the date thereof, nor until the same shall have received the approval of the governor in such form as may be provided by law. No grant or patent for any such lands shall issue until final payment be made.

§ 7. All lands, money or other property donated, granted or received from the United States or any other source for a university, agricultural college, normal schools or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall

be deemed a trust fund held by the state, and the state shall make good all losses therefrom that shall in any manner occur.

§ 8. All lands mentioned in the preceding section shall be appraised and sold in the same maner and by the same officers and boards under the same limitations and subject to all the conditions as to price, sale and approval, provided above for the appraisal and sale of lands for the benefit of public schools, but a distinct and separate account shall be kept by the proper officers of each of such funds.

§ 9. No lands mentioned in this article shall be leased except for pasturage and meadow purposes, and at public auction after notice as hereinbefore provided in case of sale, and shall be offered in tracts not greater than one section. All rents shall be payable annually in advance, and no term of lease shall exceed five years, nor shall any lease be valid until it receives the approval of the governor.

§ 10. No claim to any public lands by any trespasser thereon by reason of occupancy, cultivation or improvement thereof, shall ever be recognized; nor shall compensation ever be made on account of any improvements made by such trespasser.

The following amendment in Section 11, of Article 8, was submitted at the general election held November 8, 1904, and was adopted by a vote of 38,681 to 21,424.

§ 11. The moneys of the permanent school and other educational funds shall be invested only in first mortgages upon good improved farm lands within the state, as hereinafter provided, or in bonds of school corporations within this state, or in bonds of the United States or of the state of South Dakota, or of any organized county, township or incorporated city in said state. The legislature shall provide by law the method of determining the amounts of said funds, which shall be invested from time to time in such classes of securities respectively, taking care to secure continuous investments as far as possible.

All moneys of said funds which may from time to time be designated for investment in farm mortgages and in the bonds of school corporations, or in bonds of organized counties, townships or incorporated cities within this state, shall for such purpose be divided among the organized counties of the state in proportion to population as nearly as provisions by law to secure continuous investment may permit. The several counties shall hold and manage the same as trust funds, and they shall be and remain responsible and accountable for the principal and interest of all such moneys received by them from the date of receipt until returned because not loaned; and in case of loss of any money so apportioned to any county, such county shall make the same good out of its common revenue. Counties shall invest said money in bonds of school corporations, counties, township or cities, or in first mortgages upon good improved farm lands within their limits respectively. The amount of each loan shall not exceed one-third the actual value of the lands covered by the mortgage given to secure the same, such value to be determined by the board of county commissioners of the county in which the land is situated, and in no case shall more than five thousand (\$5,000) dollars be loaned to any one person, firm or corporation, and the rate of interest shall not be less than five per cent per annum and shall be such other and higher rate as the legislature may provide and shall be payable semi-annually on the first day of January and July; provided, that whenever there are moneys of said fund in any county amounting to one thousand dollars that cannot be loaned according to the provisions of this section and any law pursuant thereto, the said sum may be returned to the state treasurer to be entrusted to some other county or counties, or otherwise invested under the provisions of this section.

Each county shall semi-annually, on the first day of January and July, render an account of the condition of the funds intrusted to it to the auditor

of state, and at the same time pay to or account to the state treasurer for the interest due on all funds intrusted to it.

The legislature may provide by general law that counties may retain from interest collected in excess of five per centum per annum upon all said funds intrusted to them, not to exceed one per centum per annum. But no county shall be exempted from the obligation to make semi-annual payments to the state treasurer of interest at the rate provided by law for such loans, except only said one per centum, and in no case shall the interest so to be paid be less than five per centum per annum.

The legislature shall provide by law for the safe investment of the permanent school and other educational funds and for the prompt collection of interest and income thereof, and to carry out the objects and provisions of this section.

The following amendment in Section 11, of Article 8, was submitted at the general election held November 4, 1902, and was adopted by a vote of 46,472 for to 9,001 against:

The rate of interest upon all investments of the permanent school or other educational funds mentioned in section 11 of Article VIII of the Constitution of this state is hereby changed and reduced from six per centum per annum to five per centum per annum, wherever the said words "six per centum per annum" occur in said section. That if the foregoing amendment shall be approved and ratified by the people at said election, as provided by Article XXIII of the Constitution, said section 11 of Article VIII of the Constitution shall be thereby amended by striking out the said words six per centum per annum wherever they occur in said section 11 and substituting in lieu thereof the words five per centum per annum.

§ 12. The governor may disapprove any sale, lease or investment other than such as are intrusted to the counties.

§ 13. All losses to the permanent school or other educational funds of this state which shall have been occasioned by the defalcation, negligence, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the fund sustaining the loss, upon which not less than six per centum of annual interest shall be paid. The amount of indebtedness so created shall not be counted as a part of the indebtedness mentioned in Article XIII, section 2.

§ 14. The legislature shall provide by law for the protection of the school lands from trespass or unlawful appropriation, and for their defense against all unauthorized claims or efforts to divert them from the school fund.

§ 15. The legislature shall make such provision by general taxation, and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.

§ 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state.

§ 17. No teacher, state, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school in this state, under such penalties as shall be provided by law.

ARTICLE IX

County and Township Organization

§ 1. The legislature shall provide by general law for organizing new counties, locating the county seats thereof and changing county lines; but no new

counties shall be organized so as to include an area of less than twenty-four congressional townships, as near as may be without dividing a township or fractional township, nor shall the boundaries of any organized county be changed so as to reduce the same to a less area than above specified. All changes in county boundaries in counties already organized, before taking effect, shall be submitted to the electors of the county or counties to be affected thereby, at the next general election thereafter and be adopted by a majority of the votes cast in each county at such election. Counties now organized shall remain as they are unless changed according to the above provisions.

Stuart et al. vs. Kirley et al., 12 S. D. 245.

§ 2. In counties already organized where the county seat has not been located by a majority vote, it shall be the duty of the county board to submit the location of the county seat to the electors of said county at a general election. The place receiving a majority of all votes cast at said election shall be the county seat of said county.

State ex rel. Adkin vs. Lien et al., 9 S. D. 297.

Adkin vs. Lien et al., 16 S. D. 436.

State ex rel. Cosper vs. Porter et al., 13 S. D. 126.

§ 3. Whenever a majority of the legal voters of any organized county shall petition the county board to change the location of the county seat which has once been located by a majority vote, specifying the place to which it is to be changed, said county board shall submit the same to the people of said county at the next general election, and if the proposition to change the county seat be ratified by two-thirds of the votes cast at said election, then the county seat shall be changed, otherwise not. A proposition to change the location of the county seat of any organized county shall not again be submitted before the expiration of four years.

The above section was amended by popular vote of 36,436 for, to 14,612 against, at the general election held November 4, 1902, to read as follows:

§ 3. Whenever a majority of the legal voters of any organized county shall petition the board to change the location of the county seat which has once been located by majority vote, specifying the place to which it is to be changed, said board shall submit the same to the people of the said county at the next general election, and if the proposition to change the county seat be ratified by two-thirds of the votes cast at said election (except as hereinafter provided) then the county seat shall be changed, otherwise not; **Provided**, however, that in cases where the county seat is not located at a railroad station and it is proposed to remove the same to a railroad station, then the proposition to change the county seat may be ratified by three-fifths of the votes cast at said election, upon the question of such removal, and in such case if the proposition to change the county seat be ratified by three-fifths of the votes cast at said election upon the question of such removal, then the county seat shall be changed, otherwise not.

"A proposition to change the location of the county seat of any organized county shall not again be submitted before the expiration of four years."

§ 4. The legislature shall provide by general law for organizing the counties into townships, having due regard for congressional township lines and natural boundaries, and whenever the population is sufficient and the natural boundaries will permit, the civil townships shall be co-extensive with the congressional townships.

§ 5. In each organized county at the first general election held after the admission of the state of South Dakota into the union, and every two years thereafter, there shall be elected a clerk of the court, sheriff, county auditor, register of deeds, treasurer, state's attorney, surveyor, coroner and superintendent of schools, whose terms of office respectively shall be two years, and except the clerk of the court, no person shall be eligible for more than four years in succession to any of the above named offices.

§ 6. The legislature shall provide by general law for such county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers.

The following amendment to section 7, Article IX, was submitted at the general election that was held November 6, 1906, and was adopted by a vote of 35,806 for, and 15,971 against:

§ 7. All county, township and district officers shall be electors in the county, township or district in which they are elected; **Provided**, that nothing in this section shall prevent the holding of school offices by any person as provided in section 9, Article VII; and **provided**, further, that the legislature shall have authority to prescribe additional qualifications for superintendent of schools, not inconsistent herewith.

ARTICLE X

Municipal Corporations

§ 1. The legislature shall provide by general laws for the organization and classification of municipal corporations. The number of such classes shall not exceed four, and the powers of each class shall be defined by general laws, so that no such corporations shall have any powers, or be subject to any restrictions other than those of all corporations of the same class. The legislature shall restrict the power of such corporations to levy taxes and assessments, borrow money and contract debts, so as to prevent the abuse of such power.

Henderson vs. Hughes County et al., 13 S. D. 576.

§ 2. Except as otherwise provided in this Constitution, no tax or assessment shall be levied or collected, or debts contracted by municipal corporations, except in pursuance of law, for public purposes specified by law; nor shall money raised by taxation, loan or assessment, for one purpose, ever be diverted to any other.

Aldrich et al. vs. Collins et al., 3 S. D. 154; *Howard vs. City of Huron et al.*, 6 S. D. 180; *Shannon et al. vs. City of Huron*, 9 S. D. 356.

§ 3. No street passenger railway or telegraph or telephone line shall be constructed within the limits of any village, town or city without the consent of its local authorities.

ARTICLE XI

Revenue and Finance

The following amendment to section 1, Article XI, was submitted at the general election that was held November 6, 1906, and was adopted by a vote of 33,285 for, and 19,895 against:

§ 1. The legislature shall provide for an annual tax, sufficient to defray the estimated ordinary expenses of the state for each year, not to exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes.

And whenever it shall appear that such ordinary expenses shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year. And for the purpose of paying the public debt, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and the principal of such debt within ten years from the final passage of the law creating the debt; **Provided**, that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state, as ascertained by the last assessment made for the state and county purposes.

Provided, that for the purpose of establishing, installing, maintaining and operating a hard fiber twine and cordage plant at the state penitentiary at

Sioux Falls, South Dakota, the legislature shall provide for a tax for the year 1907 of not to exceed one and one-half mills on each dollar of the assessed valuation of all taxable property in the state, as ascertained by the last assessment made for state and county purposes.

In re Limitation of Taxation, 3 S. D. 456.

§ 2. All taxes to be raised in this state shall be uniform on all real and personal property, according to its value in money, to be ascertained by such rules of appraisement and assessment as may be prescribed by the legislature by general law, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property. And the legislature shall provide by general law for the assessing and levying of taxes on all corporation property, as near as may be, by the same methods as are provided for assessing and levying of taxes on individual property.

State ex rel. Grigsby vs. Buechler, 10 S. D. 156.

§ 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.

§ 4. The legislature shall provide for taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also for taxing the notes and bills discounted or purchased, moneys loaned and all other property, effects or dues of every description, of all banks and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

§ 5. The property of the United States and of the state, county and municipal corporations, both real and personal, shall be exempt from taxation.

§ 6. The legislature shall, by general law, exempt from taxation property used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation.

§ 7. All laws exempting property from taxation, other than that enumerated in sections 5 and 6 of this article, shall be void.

§ 8. No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied.

In re Limitation of Taxation, 3 S. D. 456.

§ 9. All taxes levied and collected for state purposes shall be paid into the state treasury. No indebtedness shall be incurred or money expended by the state, and no warrant shall be drawn upon the state treasurer except in pursuance of an appropriation for the specific purpose first made. The legislature shall provide by suitable enactment for carrying this section into effect.

Carter vs. Thorson, Secretary of State, 5 S. D. 474; VanDusen et al. vs. State, 11 S. D. 318; Stanton vs. State, 5 S. D. 515.

§ 10. The legislature may vest the corporate authority of cities, towns and villages with power to make local improvements by special taxation of contiguous property or otherwise. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such tax shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

§ 11. The making of profit, directly or indirectly, out of state, county, city, town or school district money, or using the same for any purpose not authorized by law, shall be deemed a felony and shall be punished as provided by law.

§ 12. An accurate statement of the receipts and expenditures of the public moneys shall be published annually, in such manner as the legislature may provide.

ARTICLE XII

Public Accounts and Expenditures

§ 1. No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer.

§ 2. The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of state institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the legislature.

§ 3. The legislature shall never grant any extra compensation to any public officer, employe, agent or contractor after the services shall have been rendered or the contract entered into, nor authorize the payment of any claims or part thereof created against the state, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void; nor shall the compensation of any public officer be increased or diminished during his term of office; **Provided, however,** that the legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Somers vs. State, 5 S. D. 321.

§ 4. An itemized statement of all receipts and expenditures of the public moneys shall be published annually in such manner as the legislature shall provide, and such statements shall be submitted to the legislature at the beginning of each regular session by the governor with his message.

ARTICLE XIII

Public Indebtedness

§ 1. Neither the state, nor any county, township or municipality shall loan or give its credit or make donations to or in aid of any individual association or corporation except for the necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor pay or become responsible for the debt or liability of any individual, association or corporation; **Provided,** that the state may assume or pay such debt or liability when incurred in time of war for the defense of the state. Nor shall the state engage in any work of internal improvement.

Cutting vs. Taylor, State Auditor, 3 S. D. 11.

§ 2. For the purpose of defraying extraordinary expenses and making public improvements, or to meet casual deficits or failure in revenue, the state may contract debts never to exceed with previous debts in the aggregate \$100,000, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state or the United States in war, and provision shall be made by law for the payment of the interest annually, and the principal when due, by tax levied for the purpose or from other sources of revenue; which law providing for the payment of such interest and principal by such tax or otherwise shall be irrepealable until such debt is paid; **Provided, however,** the state of South Dakota shall have the power to refund the territorial debt assumed by the state of South Dakota by bonds of the state of South Dakota.

In re State Warrants, 6 S. D. 518; In re State Bonds, 7 S. D. 42.

§ 3. That the indebtedness of the state of South Dakota limited by section two of this article shall be in addition to the debt of the territory of Dakota assumed by and agreed to be paid by South Dakota.

§ 4. The debt of any county, city, town, school district, civil township,

or other subdivision, shall never exceed five (5) per centum upon the assessed value of the taxable property therein. In estimating the amount of indebtedness which a municipality or subdivision may incur the amount of indebtedness contracted prior to the adoption of this Constitution shall be included.

Provided, that any county, municipal corporation, civil township, district or other subdivision, may incur an additional indebtedness not exceeding ten per centum upon the assessed value of the taxable property therein for the purpose of providing water for irrigation and domestic uses. **Provided, further**, that no county, municipal corporation or civil township shall be included within any such district or subdivision without a majority vote in favor thereof of the electors of the county, municipal corporation or civil township, as the case may be, which is proposed to be included therein, and no such debt shall ever be incurred for any of the purposes in this section provided, unless authorized by a vote in favor thereof of a majority of the electors of such county, municipal corporation, civil township, district or subdivision incurring the same.

Note—The foregoing section (4) was submitted by the legislature in 1895, as an amendment to Section 4 of Article 13 of the Constitution, and was adopted at the general election of 1896 by a vote of 28,490 for, and 14,789 against.

That at the general election held on November 4, 1902, Section 4 of Article 13 of the Constitution was amended by a popular vote of 32,810 for, to 13,599 against, so as to read as follows:

"Section 4. The debt of any county, city, town, school district, civil township or other subdivision, shall never exceed five (5) per centum upon the assessed valuation of the taxable property therein for the year preceding that in which said indebtedness is incurred.

"In estimating the amount of the indebtedness which a municipality or subdivision may incur, the amount of indebtedness contracted prior to the adoption of the Constitution shall be included;

"**Provided**, That any county, municipal corporation, civil township, district or other subdivision may incur an additional indebtedness not exceeding ten per centum upon the assessed valuation of the taxable property therein for the year preceding that in which said indebtedness is incurred, for the purpose of providing water and sewerage for irrigation, domestic uses, sewerage and other purposes; and

"**Provided, further**, That in a city where the population is 8,000 or more, such city may incur an indebtedness not exceeding eight per centum upon the assessed valuation of the taxable property therein for the year next preceding that in which said indebtedness is incurred for the purpose of constructing street railways, electric lights or other lighting plants.

"**Provided, further**, That no county, municipal corporation, civil township, district or subdivision shall be included within such district or subdivision without a majority vote in favor thereof of the electors of the county, municipal corporation, civil township, district or other subdivision as the case may be, which is proposed to be included therein, and no such debt shall ever be incurred for any of the purposes in this section provided, unless authorized by a vote in favor thereof by a majority of the electors of such county, municipal corporation, civil township, district or subdivision incurring the same."

§ 5. Any city, county, town, school district or any other subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

Wilson vs. Board of Education, 12 S. D. 535.

§ 6. In order that the payment of the debts and liabilities contracted or incurred by and in behalf of the territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of

congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," the states of North Dakota and South Dakota, by proceedings of a joint commission, duly appointed under said act, the sessions whereof were held in Bismarck in said state of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the territory of Dakota which shall be assumed and paid by each of the states of North Dakota and South Dakota, respectively, to-wit:

1. This agreement shall take effect and be in force from and after the admission into the union, as one of the United States of America, of either the state of North Dakota or the state of South Dakota.

2. The words "State of North Dakota," wherever used in this agreement, shall be taken to mean the territory of North Dakota, in case the state of South Dakota shall be admitted into the union prior to the admission into the union of the state of North Dakota; and the words "State of South Dakota," wherever used in this agreement, shall be taken to mean the territory of South Dakota in case the state of North Dakota shall be admitted into the union prior to the admission into the union of the state of South Dakota.

3. The said state of North Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the territory of Dakota, approved March 3, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

4. The said state of South Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota.

5. That is to say: The state of North Dakota shall assume and pay the following bonds and indebtedness, to-wit: Bonds issued on account of the hospital for insane at Jamestown, North Dakota, the face aggregate of which is two hundred and sixty-six thousand dollars; also, bonds issued on account of the North Dakota University at Grand Forks, North Dakota, the face aggregate of which is ninety-six thousand seven hundred dollars; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is ninety-three thousand six hundred dollars; also refunding capitol building warrants, dated April 1, 1889, eighty-three thousand five hundred and seven dollars and forty-six cents.

And the state of South Dakota shall assume and pay the following bonds and indebtedness, to-wit: Bonds issued on account of the hospital for the insane at Yankton, South Dakota, the face aggregate of which is two hundred and ten thousand dollars; also, bonds issued on account of the school for deaf mutes at Sioux Falls, South Dakota, the face aggregate of which is fifty-one thousand dollars; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is seventy-five thousand dollars; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is ninety-four thousand three hundred dollars; also, bonds issued on account of the agricultural college at Brookings, South Dakota, the face aggregate of which is ninety-seven thousand five hundred dollars; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is forty-nine thousand four hundred dollars; also, bonds issued on account of school of mines at Rapid City, South Dakota, the face aggregate of which is thirty-three thousand dollars; also,

bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is thirty thousand dollars; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is twenty-five thousand dollars; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is forty-five thousand dollars.

6. The states of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore and hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

7. The state of South Dakota shall pay to the state of North Dakota forty-six thousand five hundred dollars on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of the Northern Pacific railroad lands, and the payment of said amount shall discharge and exempt the state of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the territory situated or located within the boundaries of the other state.

8. A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 8, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one-half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed state of North Dakota, shall be credited to the state of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed state of South Dakota shall be credited to the state of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the act of the legislative assembly of the territory of Dakota, approved March 7, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this territory," being chapter 107 of the Session Laws of 1889 (that is, the part of such sum going to the territory) shall be equally divided between the states of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into the said treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so * thereof as shall be or has been paid by railroads within the limits of the proposed state of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed state of South Dakota. Each state shall be credited also with all balances of appropriations made by the Sev-

enteenth legislative assembly of the territory of Dakota for the account of public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each state shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such state in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said state as provided in this article; and if there should be a surplus at the time of such final adjustment, each state shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged to it.

§ 7. And the state of South Dakota hereby obligates itself to pay such part of the debts and liabilities of the territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said state of South Dakota as its own debt or liability.

§ 8. The territorial treasurer is hereby authorized and empowered to issue refunding bonds to the amount of \$107,500.00, bearing interest not to exceed the rate of four per cent per annum, for the purpose of refunding the following described indebtedness of the territory of Dakota, to-wit:

Seventy-seven thousand five hundred dollars 5 per cent bonds, date May 1, 1883, issued for the construction of the west wing of the insane hospital at Yankton, and \$30,000 6 per cent bonds, dated May 1, 1883, issued for permanent improvements Dakota penitentiary, at Sioux Falls, such refunding bonds, if issued, to run for not more than twenty years, and shall be executed by the governor and treasurer of the territory, and shall be attested by the secretary under the great seal of the territory.

In case such bonds are issued by the territorial treasurer as hereinbefore set forth, before the first day of October, 1889, then upon the admission of South Dakota as a state it shall assume and pay said bonds in lieu of the aforesaid territorial indebtedness.

ARTICLE XIV

State Institutions

§ 1. The charitable and penal institutions of the state of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind, and a reform school.

§ 2. The state institutions provided for in the preceding section shall be under the control of the state board of charities and corrections, under such rules and restrictions as the legislature shall provide; such board to consist of not to exceed five members, to be appointed by the governor and confirmed by the senate, and whose compensation shall be fixed by law.

State ex rel. Lavin et al. vs. Bacon et al., 14 S. D. 284-394, 85 N. W. 605.

§ 3. The state university, the agricultural college, the normal schools and all other educational institutions that may be sustained either wholly or in part by the state, shall be under the control of a board of five members appointed by the governor and confirmed by the senate, under such rules and restrictions as the legislature shall provide. The legislature may increase the number of members to nine.

Note—This section (3) was submitted as an amendment to Constitution, Article 14, Section 3, by the legislature in 1895, and at the general election in 1896 was adopted by the following vote: 31,061 for, and 11,690 against.

§ 4. The regents shall appoint a board of five members for each institution under their control, to be designated the board of trustees. They shall hold office for five years, one member retiring annually. The trustees of each

institution shall appoint the faculty of the same, and shall provide for the current management of the institution, but all appointments and removals must have the approval of the regents to be valid. The trustees of the several institutions shall receive no compensation for their services, but they shall be reimbursed for all expenses incurred in the discharge of their duties, upon presenting an itemized account of the same to the proper officer. Each board of trustees at its first meeting shall decide by lot the order in which its members shall retire from office.

Note—Constitution Article 14, Section 4, was stricken from the Constitution by an amendment submitted by the legislature in 1895, and was adopted by the popular vote at the general election in 1896: 31,061 for, and 11,690 against.

§ 5. The legislature shall provide that the science of mining and metallurgy shall be taught in at least one institution of learning under the patronage of the state.

ARTICLE XV

Militia

§ 1. The militia of the state of South Dakota shall consist of all able-bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this state.

§ 2. The legislature shall provide by law for the enrollment, uniforming, equipment and discipline of the militia and the establishment of volunteer and such other organizations or both, as may be deemed necessary for the protection of the state, the preservation of order and the efficiency and good of the service.

§ 3. The legislature in providing for the organization of the militia shall conform, as nearly as practicable, to the regulations of the government of the armies of the United States.

§ 4. All militia officers shall be commissioned by the governor, and may hold their commissions for such period of time as the legislature may provide, subject to removal by the governor for cause, to be first ascertained by a court-martial pursuant to law.

§ 5. The militia shall in cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at muster and elections, and in going to and returning from the same.

§ 6. All military records, banners and relics of the state, except when in lawful use, shall be preserved in the office of the adjutant general as an enduring memorial of the patriotism and valor of South Dakota, and it shall be the duty of the legislature to provide by law for the safe keeping of the same.

§ 7. No person having conscientious scruples against bearing arms shall be compelled to do military duty in time of peace.

ARTICLE XVI

Impeachment and Removal From Office

§ 1. The house of representatives shall have the sole power of impeachment.

The concurrence of a majority of all members elected shall be necessary to an impeachment.

§ 2. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial the presiding judge of the supreme court shall preside.

§ 3. The governor and other state and judicial officers, except county

judges, justices of the peace and police magistrates, shall be liable to impeachment for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

§ 4. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency, in such manner as may be provided by law.

§ 5. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

§ 6. On trial of an impeachment against the governor the lieutenant governor shall not act as a member of the court.

§ 7. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

§ 8. No person shall be liable to impeachment twice for the same offense.

ARTICLE XVII

Corporations

§ 1. No corporation shall be created or have its charter extended, changed or amended by special laws except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the state; but the legislature shall provide, by general laws, for the organizations of all corporations hereafter to be created.

§ 2. All existing charters, or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

§ 3. The legislature shall not remit the forfeiture of the charter of any corporation now existing nor alter or amend the same nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

§ 4. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state.

§ 5. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

§ 6. No foreign corporation shall do any business in this state without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served.

§ 7. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

§ 8. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days' notice given in pursuance of law.

§ 9. The legislature shall have the power to alter, revise or annul any charter of any corporation now existing and revokable at the taking effect of this Constitution, or any that may be created, whenever in their opinion it may be injurious to the citizens of this state, in such a manner, however, that no injustice shall be done to the incorporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

§ 10. No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

§ 11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph in this state and to connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire by purchase or otherwise any other competing line of telegraph.

§ 12. Every railroad corporation organized or doing business in this state under the laws or authority thereof shall have and maintain a public office or place in this state for the transaction of its business, where transfers of its stock shall be made, and in which shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amount owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities; and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislature shall pass laws enforcing by suitable penalties the provisions of this section.

§ 13. The rolling stock, and all other movable property belonging to any railroad company or corporation in this state shall be considered personal property and shall be liable to execution and sale in the same manner as the personal property of individuals, and the legislature shall pass no laws exempting such property from execution and sale.

§ 14. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given out at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

§ 15. Railways heretofore constructed or that may hereafter be constructed in this state are hereby declared public highways, and all railroad and transportation companies are declared to be common carriers and subject to legislative control; and the legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight as such common carriers from one point to another in this state.

§ 16. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each the other's

passengers, tonnage and cars, loaded or empty, without delay or discrimination.

§ 17. The legislature shall pass laws to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

§ 18. Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporation or individuals made by viewers or otherwise; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury as in other civil cases.

§ 19. The term "corporation" as used in this article, shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

§ 20. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership or association of persons in this state shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

The legislature shall pass laws for the enforcement of this section by adequate penalties, and in the case of incorporated companies, if necessary for that purpose, may, as a penalty, declare a forfeiture of their franchises.

Note—This section (20) was submitted as an amendment to the Constitution by the legislature in 1895, and was adopted by a popular vote of the electors of the state at the general election in 1896, by the following vote: For, 36,763; against, 9,136.

ARTICLE XVII

Banking and Currency

§ 1. If a general banking law shall be enacted it shall provide for the registry and countersigning by an officer of this state of all bills or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the state treasurer, in the approved securities of the state or of the United States, to be rated at ten per centum below their par value, and in case of their depreciation the deficiency shall be made good by depositing additional securities.

§ 2. Every bank, banking company or corporation shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter close its business, but shall have corporate capacity to sue or be sued until its business is finally closed, but the legislature may provide by general law for the reorganization of such banks.

§ 3. The shareholders or stockholders of any banking corporation shall be held individually responsible and liable for all contracts, debts and engagements of such corporation to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares of stock; and such individual liabilities shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

ARTICLE XIX

Congressional and Legislative Apportionment

§ 1. Until otherwise provided by law, the members of the house of representatives of the United States, apportioned to this state, shall be elected by the state at large.

§ 2. Until otherwise provided by law, the senatorial and representative districts shall be formed, and the senators and representatives shall be apportioned as follows:

Districts

Note—The present apportionment is omitted from the Constitution, as the same appears as H. B. No. 276, Session Laws of 1907, "An Act Entitled an Act to Redistrict the State of South Dakota Into Legislative Districts, and to Apportion the Number of Senators and Representatives Therein."

ARTICLE XX

Seat of Government

§ 1. The question of the location of the temporary seat of government shall be submitted to a vote of the electors of the proposed state of South Dakota in the same manner and at the same election at which this Constitution shall be submitted, and the place receiving the highest number of votes shall be the temporary seat of government until a permanent seat of government shall be established as hereinafter provided.

§ 2. The legislature at its first session after the admission of this state, shall provide for the submission of the question of a place for a permanent seat of government to the qualified voters of the state at the next general election thereafter, and that place which receives a majority of all the votes cast upon that question shall be the permanent seat of government.

§ 3. Should no place voted for at said election have a majority of all votes cast upon this question, the governor shall issue his proclamation for an election to be held in the same manner at the next general election to choose between the two places having received the highest number of votes cast at the first election on this question. This election shall be conducted in the same manner as the first election for the permanent seat of government, and the place receiving the majority of all votes cast upon this question shall be the permanent seat of government.

ARTICLE XXI

Miscellaneous

§ 1. Seal and Coat of Arms] The design of the great seal of South Dakota shall be as follows: A circle within which shall appear in the left foreground a smelting furnace and other features of mining work. In the left background a range of hills. In the right foreground a farmer at his plow. In the right background a herd of cattle and a field of corn. Between the two parts thus described shall appear a river bearing a steamboat. Properly divided between the upper and lower edges of the circle shall appear the legend, "Under God the People Rule," which shall be the motto of the state of South Dakota. Exterior to this circle and within a circumscribed circle shall appear, in the upper part, the words "State of South Dakota," in the lower part the words, "Great Seal," and the date in Arabic numerals of the year in which the state shall be admitted to the union.

Compensation of Public Officers

§ 2. The governor shall receive an annual salary of two thousand five hundred dollars; the judges of the supreme court shall each receive an annual salary of two thousand five hundred dollars; the judges of the circuit court shall each receive an annual salary of two thousand dollars; **Provided**, that the legislature may, after the year one thousand eight hundred and ninety, increase the annual salary of the governor and each of the judges of the supreme court to three thousand dollars, and the annual salary of each of the circuit court

judges to two thousand five hundred dollars. The secretary of state, state treasurer and state auditor shall each receive an annual salary of one thousand and eight hundred dollars; the commissioner of school and public lands shall receive an annual salary of one thousand eight hundred dollars; the superintendent of public instruction shall receive an annual salary of one thousand eight hundred dollars; the attorney general shall receive an annual salary of one thousand dollars; the compensation of the lieutenant governor shall be double the compensation of the state senator. They shall receive no fees or perquisites whatever for the performance of any duties connected with their offices. It shall not be competent for the legislature to increase the salaries of the officers named in this article except as herein provided.

Note—By the provisions of Chapter 110, Laws of 1901, approved February 1, 1901, the salaries of the governor and judges of the supreme and circuit courts were increased as contemplated by the above section.

State vs. Roddle, 12 S. D. 433.

§ 3. Oath of Office] Every person elected or appointed to any office in this state, except such inferior offices as may be by law exempted, shall before entering upon the duties thereof, take an oath or affirmation to support the constitution of the United States and of this state, and faithfully to discharge the duties of his office.

§ 4. Exemptions] The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws exempting from forced sale a homestead, the value of which shall be limited and defined by law, to all heads of families, and a reasonable amount of personal property, the kind and value of which shall be fixed by general laws.

Karcher vs. Gans, 13 S. D. 383; Fallishe vs. Wittmayer, 9 S. D. 479.

§ 5. Rights of Married Women] The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband.

§ 6. The drainage of agricultural lands is hereby declared to be a public purpose and the legislature may provide therefor, and may provide for the organization of drainage districts for the drainage of lands for any public use, and may vest the corporate authorities thereof, and the corporate authorities of counties, townships and municipalities, with power to construct levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state, by special assessments upon the property benefited thereby, according to benefits received.

This section (6) was submitted as an amendment to the constitution by the legislature of 1905, and was adopted by the popular vote of the electors at the general election of 1906, by the following vote: For, 31,151; against, 18,799.

ARTICLE XXII

Compact With the United States

The following article shall be irrevocable without the consent of the United States and the people of the state of South Dakota expressed by their legislative assembly:

First—That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second—That we, the people inhabiting the state of South Dakota, do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundary of South Dakota, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States; and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said state shall never be taxed at a higher

rate than the lands belonging to residents of this state; that no taxes shall be imposed by the state of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the state of South Dakota from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person a title thereto by patent or other grant save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation. All such lands which may have been exempted by any grant or law of the United States shall remain exempt to the extent, and as prescribed by such act of congress.

Third—That the state of South Dakota shall assume and pay that portion of the debts and liabilities of the territory of Dakota as provided in this Constitution.

Fourth—That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of this state, and free from sectarian control.

ARTICLE XXIII

Amendments and Revisions of the Constitution

§ 1. Any amendment or amendments to this Constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and it shall be the duty of the legislature to submit such proposed amendment or amendments to the vote of the people at the next general election. And if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of this Constitution; **Provided**, that the amendment or amendments so proposed shall be published for a period of twelve weeks previous to the date of said election, in such manner as the legislature may provide; and **Provided**, further, that if more than one amendment be submitted they shall be submitted in such manner that the people may vote for or against such amendments separately.

Lovett vs. Ferguson, 10 S. D. 44; State ex rel. Adams et al. vs. Herreid et al., 10 S. D. 109.

§ 2. Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this Constitution they shall recommend to the electors to vote at the next election for members of the legislature, for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives of the legislature, and shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

ARTICLE XXIV

Prohibition

Note—Article 24 of the Constitution was adopted at the time of the adoption of the Constitution, October 1, 1889, it being voted upon separately, by the following vote: For, 40,234; against, 34,510. The legislature in 1895 submitted an amendment for the repeal of this article (24), which was adopted by a popular vote of the electors at the general election in 1896, by a vote of 31,901 for, and 24,910 against.

ARTICLE XXV

Minority Representation

Note—Article 25 of the Constitution was submitted to a separate vote at the time of the adoption of the Constitution, October 1, 1889, and was rejected by a vote of 24,161 for, and 46,200 against.

ARTICLE XXVI

Schedule and Ordinance

Note—As the provisions of this article (26), with the exception of sections 17 and 18 thereof, have become obsolete, or fully executed, they have been omitted from this compilation.

§ 17. The ordinances and schedule enacted by this convention shall be held to be valid for all the purposes thereof.

§ 18. That we, the people of the state of South Dakota, do ordain:

First—That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second—That we, the people inhabiting the state of South Dakota, do agree and declare, that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries of South Dakota; and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said state shall never be taxed at a higher rate than the lands belonging to residents of this state. That no taxes shall be imposed by the state of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the state of South Dakota from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person a title thereto by patent or other grant, save and except such lands as have been, or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, all such lands which may have been exempted by any grant or law of the United States shall remain exempt to the extent, and as prescribed by such act of congress.

Third—That the state of South Dakota shall assume and pay that portion of the debts and liabilities of the territory of Dakota as provided in this Constitution.

Fourth—That provisions shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of this state, and free from sectarian control.

Fifth—That jurisdiction is ceded to the United States over the military reservations of Fort Meade, Fort Randall and Fort Sully, heretofore declared by the president of the United States; *Provided*, legal process, civil and criminal, of this state, shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

These ordinances shall be irrevocable without the consent of the United States, and also the people of the said state of South Dakota, expressed by their legislative assembly.

ARTICLE XXVII

State Control of Manufacture and Sale of Liquor

Note—Article 27 of the Constitution, providing that the manufacture and sale of liquor should be under exclusive state control, was submitted by the legislature in 1897, and adopted by a vote of the people at the general election in 1898, by a vote of 22,170 for, and 20,557 against. The legislature in 1899 submitted an amendment repealing Article 27, and at the general election held in 1900 the amendment was adopted by a vote of 48,673 for, and 33,927 against.

ARTICLE XXVIII

§ 1. The several counties of the state shall invest the moneys of the permanent school and endowment funds in bonds of school corporation, state, county and municipal bonds, or in first mortgages upon good improved farm lands within their limits respectively, under such regulations as the legislature may provide, but no farm loan shall exceed one thousand dollars to any one person, firm or corporation.

Note—Article 28 was proposed by the legislature in 1899 as an amendment to the Constitution, and was at the general election held in November, 1900, adopted by a popular vote of 49,989 for, and 15,653 against.

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STATE GOVERNMENT

1907-1908

OFFICIAL DIRECTORY

EXECUTIVE DEPARTMENT

Coe I. Crawford.....	Governor	Huron
John L. Erickson.....	Acting Private Secretary.....	Sioux Falls
J. W. Blount.....	Clerk and Stenographer.....	Huron
H. C. Shober.....	Lieutenant Governor	Highmore

DEPARTMENT OF STATE

D. D. Wipf.....	Secretary of State.....	Olivet
E. A. Platts.....	Assistant Secretary of State.....	Flandreau
H. M. Sterud.....	Chief Clerk	Pierre
J. J. Kleinsasser.....	Recording Clerk	Freeman
John J. Felok.....	Assistant Recording Clerk.....	Freeman
Millie M. Clough.....	Stenographer	Pierre
E. C. Sanders.....	Janitor	Pierre
Hugh Green	Assistant Janitor	Pierre
J. C. Morse.....	Night Watch	Pierre

AUDITOR'S DEPARTMENT

John Hirning	State Auditor	Herreid
F. C. Hedger.....	Deputy	Aberdeen
T. G. Brown.....	Bookkeeper	DeSmet
Sophie G. DeLand.....	Stenographer	Pierre

TREASURER'S DEPARTMENT

C. H. Cassill.....	State Treasurer	Canton
T. E. Cassill.....	Deputy	Hudson
Ezra Issenhuth	Bookkeeper and Stenographer.....	Huron

LEGAL DEPARTMENT

S. W. Clark.....	Attorney General	Redfield
Cloyd D. Sterling.....	Assistant	Redfield
A. Clay Darling.....	Brief Clerk	Harrisburg
Oscar Bancroft	Stenographer	Pierre
Ethel Magub	Stenographer	Pierre

DEPARTMENT OF EDUCATION

H. A. Ustrud.....	Superintendent Public Instruction.....	Sioux Falls
C. E. Swanson.....	Deputy	DeSmet
Florence Nordlie	Stenographer	Pierre

DEPARTMENT OF SCHOOL AND PUBLIC LANDS

O. C. Dokken.....	Commissioner	Toronto
J. E. Truran.....	Deputy	Milbank
J. G. Dann.....	Chief Clerk	Pierre
N. M. Hanson.....	Leasing and Sale Clerk.....	Hurley
C. M. Pier.....	Traveling Auditor.....	Parker
Geo. C. Barney.....	Field Deputy	Pierre
M. A. Adams.....	Field Deputy.....	Clear Lake
Mae R. Bach.....	Recording Clerk	Hurley
Katherina Westlund	Stenographer	Pierre

SUPREME COURT

Hon. Howard G. Fuller....	Presiding Judge	Faulton
Hon. Dick Haney.....	Judge	Mitchell
Hon. Dighton Corson.....	Judge	Deadwood
Frank Crane	Clerk	Watertown
H. R. Horner.....	Reporter	Pierre
James S. Sebree.....	Marshal and Librarian.....	Pierre
Maude S. Williams.....	Stenographer for Judge Haney.....	Pierre
Homer Hoover	Stenographer for Judge Corson.....	Brookings
Matt W. Murphy.....	Stenographer for Judge Fuller.....	Brookings

CIRCUIT JUDGES

First Circuit.....	Hon. E. G. Smith.....	Yankton
Second Circuit.....	Hon. Joseph W. Jones.....	Sioux Falls
Third Circuit	Hon. Geo. H. Marquis.....	Clear Lake
Fourth Circuit	Hon. Frank B. Smith.....	Mitchell
Fifth Circuit	Hon. James H. McCoy.....	Aberdeen
Sixth Circuit	Hon. L. T. Boucher.....	Eureka
Seventh Circuit	Hon. Levi McGee.....	Rapid City
Eighth Circuit	Hon. W. G. Rice.....	Deadwood
Ninth Circuit	Hon. Chas. S. Whiting.....	DeSmet

UNITED STATES SENATORS**Term Expires**

Hon. A. B. Kittredge.....	March 4, 1909.....	Sioux Falls
Hon. Robert J. Gamble....	March 4, 1913.....	Yankton

REPRESENTATIVES IN CONGRESS

Hon. Philo Hall.....	Brookings
Hon. W. H. Parker.....	Deadwood

DEPARTMENT OF INSURANCE

	Term Expires	
O. S. Basford, Comm'r.	July 1, 1909	Redfield
Ilma Schubert	Chief Clerk	Pierre
Irene Barnes	Assistant Clerk	Nowlin

RAILROAD COMMISSIONERS

	Term Expires	
D. H. Smith	1909	Miller
William G. Smith	1911	Sturgis
Geo. Rice	1913	Flandreau
William H. Stanley	Secretary	Sioux Falls
(Headquarters of Commission, Sioux Falls)		

MILITARY DEPARTMENT

(Term expires March 9, 1909)

Chas. H. Englesby	Adjutant General	Watertown
George G. Guyer	Aide-de-Camp	Brookings
W. H. Stokes	Aide-de-Camp	Watertown
Harry Libby	Aide-de-Camp	McCook
Frank Mullen	Aide-de-Camp	Burke
C. C. Clason	Aide-de-Camp	Sioux Falls

DEPARTMENT OF HISTORY

Doane Robinson	Secretary and Superintendent	Pierre
Hazel Muckler	Recording Clerk	Pierre
Sadie Notson	Indexer	Pierre
Ida Anding	Stenographer	Pierre

DEPARTMENT OF PUBLIC EXAMINER

Term Expires

John L. Jones	March 1, 1909	Madison
J. L. Wingfield	Deputy	Mitchell
C. A. Fountain	Deputy	Clark

STATE ENGINEER

Term Expires

Saml. H. Lea	March 26, 1912	Sturgis
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FOOD AND DAIRY COMMISSIONER

Term Expires

A. H. Wheaton	February 1, 1909	Brookings
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INSPECTOR OF MINES

Term Expires

Nicholas Treweek, Sr.	March 30, 1909	Lead
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INSPECTORS OF OIL

Term Expires

Daniel P. Lamb	July 1, 1909	Geddes
W. S. Demaree	July 1, 1909	Huron
Wm. A. Clark	July 1, 1909	Lead

HOTEL INSPECTOR

Term Expires

C. M. Hopkins..... March 1, 1909.....Aberdeen

STATE SURVEYOR

Term Expires

U. S. Griggs..... April 1, 1909.....Pierre

STATE VETERINARY SURGEON

Term Expires

Thomas H. Hicks..... March 1, 1909.....Milbank

REGENTS OF EDUCATION

Term Expires

F. A. Spafford..... January 1, 1909.....Flandreau

A. W. Burt..... January 1, 1909.....Huron

E. C. Ericson..... January 1, 1913.....Elk Point

A. Norby January 1, 1913.....Sisseton

Samuel Forest January 1, 1911.....Britton

BOARD OF CHARITIES AND CORRECTIONS

Term Expires

W. E. Tipton..... March 1, 1909.....Mitchell

D. C. Thomas..... March 1, 1909.....Watertown

Wm. M. Powers..... March 1, 1909.....Yankton

BOARD OF HEALTH

Term Expires

W. H. Lane..... April, 1912 Miller

Dr. H. A. Peabody..... April, 1908 Webster

Dr. Lyman F. Babcock..... April, 1909 Deadwood

Dr. W. E. More..... April, 1910 Tyndall

Dr. R. T. Dott..... April, 1910 Salem

BOARD OF PHARMACY

Term Expires

D. F. Jones..... September 30, 1907.....Watertown

O. A. Griffis..... October 1, 1908.....Aberdeen

James Lewis October 1, 1909.....Canton

STATE BOARD OF MEDICAL EXAMINERS

Term Expires

A. A. Cotton..... March 31, 1908.....Vermillion

A. G. Allen..... April 1, 1908.....Deadwood

F. W. Freyberg..... March 31, 1909.....Mitchell

H. E. McNutt..... March 31, 1909.....Aberdeen

J. M. Walsh..... July 3, 1907.....Fort Pierre

S. H. Graves..... July 3, 1907.....Hurley

L. G. Hill..... March 31, 1909.....Watertown

STATE BOARD OF DENTAL EXAMINERS

Term Expires

G. W. Collins.....	July 1, 1907.....	Vermillion
F. E. Field.....	July 12, 1908.....	Sioux Falls
C. W. Stutenroth.....	March 16, 1909.....	Watertown
F. M. Palmer.....	March 20, 1910.....	Madison
Henry C. Larson.....	March 15, 1911.....	Bryant

STATE BOARD OF EMBALMERS

Term Expires

M. F. Cummings.....	April 6, 1911.....	Wilmot
S. R. Smith.....	April 6, 1909.....	Lead
S. S. Ruble.....	April 6, 1910.....	Pierre

COMMISSIONERS OF SOLDIERS' HOME BOARD

Term Expires

J. B. Geddis.....	March 30, 1909.....	Huron
A. B. Nelson.....	March 30, 1909.....	Pierre
(Unexpired term of Fitch)		
J. W. Pratt.....	March 31, 1909.....	Spearfish
John D. Patton.....	March 31, 1911.....	Rapid City
(Unexpired term of De Jean)		
George A. Ludlow.....	March 31, 1909.....	Sioux Falls

STATE BOARD OF AGRICULTURE

Term Expires

J. W. Peterson.....	April 1, 1908.....	Vermillion
W. S. Hill.....	April 1, 1909.....	Alexandria
J. W. Campbell.....	April 1, 1910.....	Huron
W. G. Faulkner.....	April 1, 1910.....	Faulkton
Clarence N. McIlvalne....	April 1, 1909.....	Huron
(Secretary and Ex-officio Commissioner of Immigration)		

LIVE STOCK COMMISSION

Term Expires

Frank M. Stewart.....	March 1, 1910.....	Buffalo Gap
C. L. Eakin.....	March 1, 1909.....	Blunt
Daniel J. Stafford.....	March 1, 1908.....	Wakonda
Frank C. Huss.....	March 1, 1912.....	Pedro
David R. Jones.....	March 1, 1911.....	Ipswich

STATE BRAND AND MARK COMMITTEE

Term Expires

H. O. Anderson.....	March 8, 1909.....	Sturgis
Noah Newbanks	March 8, 1909.....	Pierre
Frank Rood	March 8, 1909.....	Ash Creek
D. D. Wipf.....	Secretary of Committee.....	Pierre

WOMAN'S INVESTIGATING COMMITTEE

Term Expires

Mrs. Alice M. Rowe.....	January 27, 1908.....	Bryant
Mrs. Alice M. Williams....	January 27, 1908.....	Centerville
Mrs. Mary E. O'Flaherty..	January 27, 1908.....	Armour

EX-OFFICIO COMMISSIONER OF IMMIGRATION

Term Expires

Clarence N. McIlvaine....	April 1, 1909.....	Huron
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STATE BOARD OF OSTEOPATHIC EXAMINERS

Term Expires

G. C. Redfield.....	April 1, 1908.....	Parker
Mary N. Farr.....	April 1, 1909.....	Pierre
W. V. Goodfellow.....	April 1, 1910.....	Groton

STATE INSTITUTIONS AND OFFICERS

University of South Dakota, Vermillion.....	B. F. Gault, President
Madison Normal School.....	J. W. Heston, President
Spearfish Normal School.....	Fayette L. Cook, President
Springfield Normal School.....	J. S. Frazee, President
Northern Normal and Industrial School, Aberdeen.....	G. W. Nash, President
State College of Agriculture and Mechanic Arts, Brookings.....	
.....	Robert L. Slagle, President
School of Mines, Rapid City.....	Chas. H. Fulton
State Blind Asylum, Gary.....	Miss Mary E. Wood
School for Deaf Mutes, Sioux Falls.....	Miss Dora Donald, Superintendent
South Dakota Penitentiary, Sioux Falls.....	H. T. Parmley, Warden
South Dakota Training School, Plankinton.....	S. E. Young, Superintendent
Hospital for Insane, Yankton.....	L. C. Mead, Superintendent
Soldiers' Home, Hot Springs.....	T. M. Goddard, Commandant
School for Feeble Minded, Redfield.....	Dr. J. K. Kutnewsky

MEMBERS OF THE SENATE

Tenth Session, 1907

Dist.	Name	County	P. O. Address
1	J. T. Scroggs.....	Union	Beresford
2	O. W. Thompson.....	Clay	Vermillion
3	C. H. Dillon.....	Yankton	Yankton
4	J. P. Cooley.....	Bon Homme	Tabor
5	J. G. Laxson.....	Lincoln	Canton
6	James S. Thomson...	Turner	Centerville
7	John Doering	Hutchinson	Parkston
8	I. T. Lothrop.....	Charles Mix, Douglas and Gregory.....	Academy
9	John A. Egge.....	Minnehaha	Corson
9	Henry Mundt	Minnehaha	Humboldt
10	James Smith	McCook	Bridgewater
11	Jacob Schiltz	Hanson	Emery
12	J. M. Erion.....	Davison	Mitchell
13	Willis C. Cook.....	Aurora	Plankinton
14	John Smith	Brule	Kimball
15	James F. Goodsell...	Moody	Flandreau
16	E. F. Krueger.....	Lake	Madison
17	H. H. Welch.....	Miner	Carthage
18	Robert E. Dowdell...	Sanborn	Artesian
19	R. S. Vessey.....	Jerauld and Buffalo.....	Wessington Springs
20	John C. Jenkins.....	Brookings	Brookings
21	Jacob Johnson	Kingsbury	Lake Preston
22	M. L. Tobin.....	Beadle	Huron
23	J. T. McCullen.....	Hand	Miller
24	Ivan W. Goodner....	Hughes, Hyde and Sully.....	Pierre
25	Wm. E. Sweeney....	Stanley and Lyman.....	Presho
26	F. H. Greene.....	Deuel	Gary
27	Warren Green	Hamlin	Hazel
28	Chas. H. Englesby...	Codington	Watertown
29	Wallace M. Danforth.	Clark	Raymond
30	D. Robertson	Spink	Conde
31	Geo. W. Merry.....	Grant	Milbank
32	Samuel A. Bell.....	Day and Marshall.....	Britton
32	William Carpenter...	Day and Marshall.....	Andover
33	John R. Weaver.....	Brown	Claremont
33	Isaac Lincoln	Brown	Aberdeen
34	L. S. Hogen.....	Roberts	Wilmot
35	Frank M. Byrne.....	Faulk and Potter.....	Faulkton
36	Eugene Overholser ..	Edmunds and Walworth.....	Evarts

MEMBERS OF THE SENATE—Continued

Dist.	Name	County	P. O. Address
37	Frederick Hepperle ..	McPherson and Campbell.....	Eureka
38	E. May	Lawrence	Lead
38	H. T. Cooper.....	Lawrence	Whitewood
39	Myron Willsie	Pennington	Rapid City
40	Henry E. Perkins....	Meade and Butte.....	Sturgis
41	William B. Dudley....	Custer and Fall River.....	Hot Springs

SENATE OFFICERS AND EMPLOYES

Name	Position	P. O. Address
H. C. Shober.....	Lieutenant Governor	Highmore
R. S. Vessey.....	President pro tempore.....	Wessington Springs
L. M. Simons.....	Secretary	Mitchell
Wm. C. Rempfer.....	First Assistant Secretary.....	Parkston
Roscoe C. Mercer.....	Second Assistant Secretary.....	Highmore
A. A. Rowen.....	Chief Engrossing and Enrolling Force.....	Parker
R. E. Grimshaw.....	First Assistant Clerk.....	Deadwood
O. M. Osbon.....	Sergeant-at-Arms	Howard
John McDonald	Assistant Sergeant-at-Arms	Huron
Orlando Searles	Postmaster	Flandreau
Chas. L. Ward.....	Assistant Postmaster	Sturgis
Ole Larson	Watchman	Platte
Will S. Ingham.....	Messenger	Belvidere
Rev. Askin	Chaplain	Pierre
Rev. Smith	Chaplain	Pierre
Rev. Russell	Chaplain	Pierre
Rev. Loveall	Chaplain	Pierre
Father Stenzel	Chaplain	Pierre
F. E. Van Schaick.....	Bill Clerk	Summit
Lorain Apley	Page	Woonsocket
Bernard Vessey	Page	Wessington Springs
Earl Bergen	Page	Pierre

MEMBERS OF THE HOUSE OF REPRESENTATIVES

Tenth Session, 1907

Dist.	Name	County	P. O. Address
1	J. F. Larson.....	Union	Alcester
1	Adam Scott	Union	Hawarden, Iowa
1	Lewis Ranum	Union	Elk Point
2	J. E. Johnson.....	Clay	Vermillion
2	M. J. Chaney.....	Clay	Wakonda
3	Titus E. Price.....	Yankton	Yankton
3	A. L. VanOsdel.....	Yankton	Misslon Hill
3	John Herman	Yankton	Lesterville
4	Sander Brynfulson ...	Lincoln	Canton
4	H. H. Cable.....	Lincoln	Hudson
4	J. M. Peterson.....	Lincoln	Beresford
5	Soren C. Nelson.....	Turner	Centerville
5	Chas. A. Andrews....	Turner	Hurley
5	E. P. Fitch.....	Turner	Parker
6	W. A. Lanam.....	Hutchinson	Olivet
6	P. P. Kleinsasser....	Hutchinson	Freeman
6	C. H. Otto.....	Hutchinson	Tripp
7	Herman Voight.....	Bon Homme	Tyndall
7	Frank Trumbo	Bon Homme	Avon
8	K. G. Foster.....	Douglas	Armour
9	William P. Joseph....	Charles Mix and Gregory.....	Wagner
9	John N. Ellerman....	Charles Mix and Gregory.....	Fairfax
10	John Ebersviller	Minnehaha	Humboldt
10	J. D. McKinney.....	Minnehaha	Sioux Falls
10	C. C. Bratrud.....	Minnehaha	Sioux Falls
10	J. P. Johnson.....	Minnehaha	Hartford
10	Ritchie Simpson.....	Minnehaha	Dell Rapids
11	J. T. Gurney.....	McCook	Spencer
11	Ben Peters	McCook	Canistota
12	John King	Hanson	Fulton
13	C. F. Drake.....	Davison	Ethan
14	Henry M. Hopkins....	Sanborn	Letcher
15	D. E. Garver.....	Aurora	White Lake
16	Wm. Zink	Jerault and Buffalo.....	Wessington Springs
17	A. M. Goff.....	Brule	Chamberlain
17	G. W. Brumbaugh....	Brule	Dunlap
18	Hugh Smith	Miner	Howard
19	John H. Groce.....	Lake	Ramona

MEMBERS OF THE HOUSE OF REPRESENTATIVES—Continued.

Dist.	Name	County	P. O. Address
19	O. B. Myers.....	Lake	Wentworth
20	Chris Olson	Moody	Dell Rapids
20	Henry Hornby	Moody	Egan
21	Allen Matteson	Brookings	Arlington
21	Severt Simonson	Brookings	Arlington
21	Edward Heffernan	Brookings	Elkton
22	J. H. Carroll.....	Kingsbury	DeSmet
22	C. W. Stoner.....	Kingsbury	Iroquois
23	Frank Oviatt	Beadle	Huron
23	S. C. Martin.....	Beadle	Wessington
24	J. D. Humiston.....	Hand	Ree Heights
25	John H. Wooley.....	Hughes, Hyde and Sully.....	Highmore
25	John H. Gropengelsler.....	Hughes, Hyde and Sully.....	Onida
26	Frank M. Rood.....	Lyman and Stanley.....	Ash Creek
27	William A. Carley.....	Clark	Jolley
27	B. O. Olson.....	Clark	Naples
28	Wilbur S. Glass.....	Codington	Watertown
28	Ben E. Lee.....	Codington	Watertown
29	W. E. Whittemore.....	Hamlin	Estelline
30	Joseph Hebal	Deuel	Goodwin
31	Ole Dingsor	Grant	Summit
31	Adolph Weide	Grant	Revillo
32	Manning Smith	Marshall	Kidder
33	O. P. J. Engstrom.....	Roberts	Summit
33	S. M. Satre.....	Roberts	Eddy
33	Bert A. See.....	Roberts	White Rock
34	John Ewald.....	Day	Pierpont
34	James Hamilton	Day	Webster
34	F. C. Palmer.....	Day	Waubay
35	J. L. Browne.....	Brown	Aberdeen
35	O. A. Swanson.....	Brown	Aberdeen
35	August Senn	Brown	Frederick
35	P. D. Kribs.....	Brown	Columbia
36	E. C. Issenhuth.....	Spink	Redfield
36	W. P. Price.....	Spink	Tulare
37	J. W. Parmley.....	Edmunds	Ipswich
38	C. B. Foncannon.....	McPherson	Eureka
39	John Bibelheimer	Walworth	Selby
40	Chris Salzsiedler.....	Campbell	Mound City
41	L. F. Michael.....	Potter	Gettysburg
42	Alexander Miller	Faulk	Devoe
43	A. J. Jones.....	Custer	Custer
44	Charles S. Eastman.....	Fall River.....	Hot Springs
45	Joseph Hare	Pennington	Key Stone

MEMBERS OF THE HOUSE OF REPRESENTATIVES—Continued

Dist.	Name	County	P. O. Address
45	Milton Frease	Pennington	Rapid City
46	John D. Hale.....	Meade	Sturgis
47	O. O. Stokes.....	Butte	Harding
48	John Wolzmuth	Lawrence	Spearfish
48	A. Shaw	Lawrence	Deadwood
48	Fred Pennington	Lawrence	Lead
48	John Peterson	Lawrence	Albany

HOUSE OFFICERS AND EMPLOYEES

Name	Position	P. O. Address
M. J. Chaney.....	Speaker	Wakonda
James W. Cone.....	Chief Clerk.....	Sioux Falls
E. M. Allen.....	First Assistant Chief Clerk.....	Redfield
E. R. Lewis.....	Second Assistant Chief Clerk.....	Ipswich
Edward Moscrip	Sergeant-at-Arms	Harrisburg
W. H. Wilson.....	Assistant Sergeant-at-Arms	Hot Springs
A. K. Crawford.....	Postmaster	Milbank
T. L. Kinney.....	Assistant Postmaster	Summit
J. H. Peterson.....	Bill Clerk	Nemo
E. D. Palmer.....	Chief Engrossing and Enrolling Clerk.....	Yankton
Ira Jones	Assistant Engrossing and Enrolling Clerk.....	Parker
Thomas Brown	Messenger	Pierre
Erick E. Hofland.....	Night Watchman.....	Elk Point
Frank Smith	Janitor	Pierre
N. E. Howard.....	Assistant Janitor	Pierre
John Porter	Page	Pierre
Will Robinson	Page	Pierre
George Shultz	Page	Pierre
Arthur Jenson	Page	Hurley

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ACCOUNTS

- | | |
|--------|---|
| 1..... | AN ACT entitled an act to amend section 1444, Article 3, Chapter 15, Revised Political Code of 1903, relating to auditing accounts. |
|--------|---|

ACKNOWLEDGMENTS

- | | |
|--------|--|
| 2..... | AN ACT for an act amending chapter 1 of the Session Laws of 1905, relating to the execution and acknowledgment of deeds, mortgages, assignments of mortgages, release of mortgages and other instruments by corporations and legalizing acknowledgments heretofore made by corporations. |
| 3..... | AN ACT to amend Article 3 of Chapter 4 of the Civil Code of 1903, relating to proof and acknowledgment of instruments. |

ACTS LEGALIZED

- | | |
|---------|--|
| 4..... | AN ACT entitled an act to legalize the order dispensing with the regular administration, findings of fact and final decree of distribution of the county court made under the provisions of Chapter 113, Session Laws of 1903. |
| 5..... | AN ACT entitled an act legalizing the action of the board of county commissioners and county auditor and treasurer of Marshall county, relating to courthouse building funds. |
| 6..... | AN ACT legalizing the incorporation of towns in this state and all proceedings and ordinances had and passed by the board of trustees of all such towns in certain cases where defects, omissions or informalities exist in the incorporation of such towns. |
| 7..... | An ACT entitled an act to legalize the transfer of real property by guardian in certain cases. |
| 8..... | AN ACT legalizing the incorporation of cities of the third class in this state and all proceedings and ordinances had and passed by the board of aldermen of all such cities in certain cases where defects, omissions or informalities exist in the incorporation of such cities. |
| 9..... | AN ACT to legalize and validate all deeds, mortgages and other instruments affecting real estate only, running to or executed by any foreign corporation which has not complied with the laws of this state and formerly territory governing such foreign corporation. |
| 10..... | AN ACT entitled "An act legalizing the incorporation of the town of Turton, Spink county, South Dakota, and official acts thereunder." |

AGE OF CONSENT

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| 11..... | AN ACT to amend Chapter 26, section 325, Revised Penal Code, relating to age of consent. |
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AGRICULTURAL COLLEGE

- | | |
|---------|--|
| 12..... | AN ACT changing the name of the South Dakota Agricultural College. |
|---------|--|

APPORTIONMENT

- | | |
|---------|--|
| 13..... | AN ACT entitled an act to redistrict the state of South Dakota into legislative districts and to apportion the number of senators and representatives therein. |
|---------|--|

APPROPRIATIONS

- | | |
|---------|--|
| 14..... | AN ACT entitled an act providing for an appropriation for the expenses of the executive and judicial departments of the state, for the current expenses of all the state officers and institutions of the state of South Dakota for the fiscal years of 1907 and 1908, insurance on public buildings, for geological survey and for state engineer of irrigation. |
| 15..... | AN ACT to appropriate money for printing and binding reports of state officers and boards for the fiscal years of 1905, 1906 and 1907, printing and binding daily and permanent house and senate journals, house and senate bills for the tenth legislative assembly of the state of South Dakota, printing and binding governor's inaugural address and message, legislative manuals, hand books, Session Laws, public documents, advertising for bids for public printing and such other printing as may be ordered by the tenth legislative assembly of the state of South Dakota and expenses of distributing such documents, supreme court reports, legislative manuals, hand books, journals and Session Laws. |
| 16..... | AN ACT entitled an act appropriating money for the per diem and mileage and salaries of the president and members of the senate and house of representatives of the tenth legislature of the state of South Dakota and for the per diem and mileage of the retiring secretary of the senate and chief clerk of the house of representatives and for the per diem of the officers and sub-employees of both branches of the legislature. |
| 17..... | AN ACT appropriating money to pay the per diem and mileage of J. E. McDougal as member of state canvassing board for the general election of the year 1906. |
| 18..... | AN ACT entitled an act to appropriate money to reimburse Meade county for funds advanced for the transportation of insane patients to the hospital for the insane at Yankton. |
| 19..... | AN ACT to appropriate money for the construction of and equipment of a lighting plant at the school for the blind at Gary, South Dakota. |
| 20..... | AN ACT entitled an act to appropriate money to pay judgments for costs against the food and dairy commissioner of the state of South Dakota. |
| 21..... | AN ACT to appropriate money to pay United States land office filing fees on selection of endowment and indemnity lands. |
| 22..... | AN ACT to appropriate money for deficiency in the maintenance fund of the state house. |

APPROPRIATIONS—Continued

23.....	<u>AN ACT to appropriate money to pay the expenses of the State Horticultural Society of the State of South Dakota.</u>
24.....	<u>AN ACT entitled an act to appropriate money to pay certain cities and towns their portion of the insurance tax for fire departments which they failed to receive in 1904.</u>
25.....	<u>AN ACT appropriating certain funds to the South Dakota Agricultural College for certain purposes.</u>
26.....	<u>AN ACT to appropriate money to erect and furnish a building to be known as the Ladies' Dormitory for the State College of Agriculture and Mechanic Arts at Brookings.</u>
27.....	<u>AN ACT to appropriate money for the maintenance of the South Dakota National Guard.</u>
28.....	<u>AN ACT entitled an act to appropriate money for improvements at the State Normal School at Madison, S. D.</u>
29.....	<u>AN ACT entitled an act for an appropriation for putting in a system of sewerage for the State Reform School.</u>
30.....	<u>AN ACT appropriating money for fare and other expenses of the investing committee on state fair grounds.</u>
31.....	<u>AN ACT entitled an act to appropriate money to publish supreme court reports.</u>
32.....	<u>AN ACT appropriating money to construct and build on the State Experimental Farm at Highmore, South Dakota, an employes' house, a barn, a granary, corn cribs, exhibit house and to put down and equip a well.</u>
33.....	<u>AN ACT to appropriate money to pay insurance on live stock pavillion located at Mitchell, South Dakota, from December, 1905, to December, 1907.</u>
34.....	<u>AN ACT to appropriate money for the completion of the infirmary building for women, equipping and furnishing the same, for extension of laundry building, for construction of a green house and for a cottage for disturbed men patients at the hospital for the insane at Yankton, South Dakota.</u>
35.....	<u>AN ACT for the appropriation of money to defray the expenses incurred under house joint resolution No. 9.</u>
36.....	<u>AN ACT to appropriate money to repair and improve the South Dakota Soldiers' Home at Hot Springs, South Dakota, to construct a hospital building, to build and equip a bakery, to enlarge the quartermaster's store building, to build six new cottages, to put in a reservoir, pipes and hydrant, for furnishing storm windows, and the improvement of the grounds, roads and walks at said soldiers' home at Hot Springs, South Dakota.</u>
37.....	<u>AN ACT to appropriate money to purchase additional lands contiguous and adjoining the grounds of the Northern Hospital for the Insane at Redfield.</u>
38.....	<u>AN ACT to appropriate money for the state fair at Huron, South Dakota.</u>
39.....	<u>AN ACT to appropriate money to construct, erect and institute on the state fair grounds at Huron, South Dakota, cattle and horse barns, a swine building and a sheep building, a dairy building and for the improvement of the ground and the construction of walks on the said state fair grounds.</u>
40.....	<u>AN ACT entitled an act to appropriate money for the purpose of erecting an addition to the building on the site of the South Dakota Improved Live Stock and Poultry Breeders' Association.</u>

APPROPRIATIONS—Continued

41.....	AN ACT to appropriate money for the construction, equipment and furnishing of an additional school building for the use of the Northern Normal and Industrial School.
42.....	AN ACT entitled an act to appropriate money to pay for material furnished at the Reform School.
43.....	AN ACT entitled an act to appropriate money for the erection and furnishing of an addition to the building used as a girls dormitory at the School for Deaf Mutes at Sioux Falls, South Dakota.
44.....	AN ACT to appropriate money for the erection and equipment of a new building for the college of law of the University of South Dakota to be erected on the grounds of said university and known as the law building.
45.....	AN ACT to appropriate money to pay Rev. James Davies the balance due him for conducting chapel services at the Reform School at Plankinton, South Dakota, for the years 1897 and 1898.
46.....	AN ACT entitled "An act to appropriate money for the construction of a janitor's house and for the reconstruction of the metallurgical laboratory at the State School of Mines at Rapid City, South Dakota."
47.....	AN ACT entitled an act to appropriate money to complete and equip certain buildings at the State Normal School at Spearfish.
48.....	AN ACT appropriating money to pay the deficiencies for conveyance of convicts to the penitentiary.
49.....	AN ACT to provide for the payment of expense of circuit judges of the state circuit courts and making appropriation therefor.
50.....	AN ACT providing for an appropriation of money to pay deficiency in the salary of the public examiner for the years 1905 and 1906.
51.....	AN ACT appropriating money to pay the deficiency expense of the attorney general.
52.....	AN ACT to appropriate money for deficiency in the fund for salaries and expenses in the office of state engineer.
53.....	AN ACT to appropriate money for deficiency in the fund for office expenses in the office of secretary of state.
54.....	AN ACT entitled an act appropriating money for clerk hire in the department of history.
55.....	AN ACT to appropriate money to pay deficiency for the printing and binding of reports of state officers and state boards of control of the state of South Dakota and such other reports and documents as were required by law to be printed by officers and employes of said state under the third class of printing for the fiscal year commencing July 1, 1905.
56.....	AN ACT appropriating money to pay the per diem and expenses of commissioners of the Soldiers' Home for the fiscal year ending June 30, 1905.
57.....	AN ACT to appropriate money for deficiencies in the maintenance fund in the salaries of officers and employes' fund and in the commissioners' fund of the South Dakota Soldiers' Home.
58.....	AN ACT to appropriate money for deficiency in fund for clerk hire in the office of commissioner of school and public lands.

APPROPRIATIONS—Continued

59.....	AN ACT entitled an act to appropriate money to pay for labor and material furnished the South Dakota Hospital for the Insane at Yankton, South Dakota.
60.....	AN ACT appropriating funds to meet a deficiency in the appropriation for incidental expenses for 1906 in the office of the commissioner of insurance.
61.....	AN ACT appropriating money for traveling expenses for the remainder of the fiscal year ending June 30, 1907, for the office of public examiner.
62.....	AN ACT to appropriate money for deficiencies to pay for publishing proposed constitutional amendments and other printing and preparing the state house and caring for same for and during the tenth legislative session and for other deficiencies.
63.....	AN ACT to authorize the consolidation of heretofore funds appropriated for the office of attorney general.

ASSESSMENT AND TAXATION

64.....	AN ACT providing for the assessment and taxation of the property of railway, telegraph, telephone, express and sleeping car companies.
65.....	AN ACT entitled an act relating to the taxation of fire insurance companies.
66.....	AN ACT authorizing and empowering the state board of assessment and equalization to levy a tax of two mills on the dollar on the assessed valuation of all taxable property in the state at their annual meeting in August, 1907, and August, 1908, for the purpose of paying the deficiency of the preceding years.
67.....	AN ACT authorizing a levy of one and one-fourth mills on the dollar for the purpose of establishing, maintaining and operating a hard fiber twine and cordage plant at the state penitentiary.
68.....	AN ACT to authorize the consolidation of state tax funds and placing to the credit of the general fund of the state.
69.....	AN ACT entitled an act exempting the members of volunteer fire departments in incorporated cities and towns in this state from the payment of poll tax.

ASSESSORS

70.....	AN ACT relating to and fixing the compensation of assessors in counties of this state having a population of twenty thousand or more and not divided into township organizations.
71.....	AN ACT entitled an act relating to the duties of county assessors in counties having more than fifty congressional townships.

ATTORNEYS

72.....	AN ACT entitled an act to amend section 686 of the Revised Political Code of 1903, as amended by Chapter 78 of the Session Laws of 1903, relating to attorneys and counsellors at law.
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BANKS

- 73..... AN ACT to amend Chapter 79 of the Session Laws of 1903 of the state of South Dakota, entitled "An act to provide uniform system for the organization and control of banks and defining the duties and powers of the public examiner.
- 74..... AN ACT declaring what shall be considered due diligence in the collection of a check or draft.

BEEF AND HIDE INSPECTOR

- 75..... AN ACT entitled an act to repeal Chapter 57, Session Laws of 1905, relating to the appointment of county beef and hide inspector, defining the duties of said inspector and requiring the inspection of slaughtered beef animals and the hide therefrom and providing penalty for the violation thereof.

BOARD OF AGRICULTURE

- 76..... AN ACT to provide for a board of agriculture and a secretary thereof, to make such secretary ex-officio commissioner of immigration, and to prescribe the powers, duties and compensation of said board and secretary and to make appropriation therefor.

BOARD OF CHARITIES AND CORRECTIONS

- 77..... AN ACT to amend section two (2) of Chapter eighty-six (86) of the Session Laws of 1903, relating to the expenses of the members of the state board of charities and corrections and the expenses and salary of a secretary of said board.
- 78..... AN ACT allowing the state board of charities and corrections to grant a right of way to the South Dakota Central Railway Company over certain state lands on conditions.

BONDS

79. AN ACT to permit sureties on official bonds to limit their liability.
- 80..... AN ACT to amend section 3145 of the Revised Political Code relating to bonds or insurance on steam threshers.
- 81..... AN ACT to amend section 3146 of the Political Code of the Revised Codes of 1903 relating to threshers' bonds or insurance and penalty.

BURGLARY

- 82..... AN ACT entitled an act defining burglary with explosives and the punishment therefor.

CAPITOL BUILDING

83.....	AN ACT entitled an act to amend Chapter 163 of the Session Laws of 1905 relating to the creation of a state capitol commission to provide for the construction of a state capitol building and providing funds and appropriating mon- eys therefor.
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CLERK OF SUPREME COURT

84.....	AN ACT entitled an act defining the duties and prescribing the fees and fixing the salary of the clerk of the supreme court.
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CIGARETTES

85.....	AN ACT entitled an act to prohibit the manufacture, sale or use of adulterated cigarettes and prohibiting the use of cigarettes by minors.
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CITIES

86.....	AN ACT entitled an act to provide for the incorporation of cities under commission.
87.....	AN ACT entitled an act to amend section 1234 and section 1236 of the Revised Political Code of the state of South Dakota relating to city officers.
88.....	AN ACT authorizing cities to own and operate telephone systems.
89.....	AN ACT entitled an act to amend section 1182 of the Revised Political Code of 1903 relating to vacancies in the office of mayor in cities of the first and second classes.
90.....	AN ACT entitled an act concerning liability of cities and towns for personal injuries and repealing all acts and parts of acts in conflict herewith.
91.....	AN ACT entitled an act to amend sections 1385 and 1387 of the Revised Political Code of 1903 relating to refunding bonded indebtedness of cities.
92.....	AN ACT to amend subdivision twenty-four (24) of section 1229 of the Revised Political Code of 1903, as amended by Chapter 221 of the Session Laws of 1903, relating to powers of city councils.
93.....	AN ACT entitled an act to provide for the loaning of the sinking funds of incorporated towns in the state of South Dakota and designating the kinds of securities in which said sinking funds may be invested and the manner of making said loan or investment.
94.....	AN ACT amending section 1229 of the Revised Political Code of 1903 as amended by Chapter 155 of the Session Laws of 1903 and Chapter 67 of the Session Laws of 1905 relating to the powers of city councils.
95.....	AN ACT relating to the general powers of city councils and incorporated towns and providing for the destruction of noxious, dangerous and unhealthful vegetation and for the removal of snow and ice from sidewalks and taxing the expenses thereof to real estate in certain cases.

CONSTITUTIONAL AMENDMENTS

96.....	A JOINT RESOLUTION proposing and agreeing to an amendment to Article XI of the Constitution of the state of South Dakota and submitting the same to a vote of the people.
97.....	A JOINT RESOLUTION for increasing salary of attorney general.

CONSTITUTIONAL DEBATES

98.....	AN ACT entitled an act providing for the publication of the debates of the constitutional conventions of 1885 and 1889.
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COUNTIES

99.....	AN ACT entitled an act defining the boundaries of Tripp county, South Dakota.
100.....	AN ACT entitled an act to give effect to section 1 of Article 9 of the Constitution relating to the division of organized counties.
101.....	AN ACT to amend Chapter 156 of the Session Laws of 1905.
102.....	AN ACT to amend section 1179 of Article 12, Chapter 13, of the Revised Political Code of 1903 relating to the duties of county and town treasurers.
103.....	AN ACT entitled an act to amend section 963 of the Revised Political Code of 1903 relating to funding outstanding bonded indebtedness and judgment indebtedness of counties.

CORPORATIONS

104.....	AN ACT entitled an act to amend sections 404, 410, 423, 780 and 786 of the Revised Civil Code of 1903 relating to domestic corporations and providing for appointment of resident agents for certain domestic corporations.
105.....	AN ACT to amend subdivision 2 of subdivision 3 of section 446 of Chapter 3 of Civil Code of 1903 relating to the dissolution of corporations.
106.....	AN ACT to amend section 1 of Chapter 105 of the Session Laws of 1903 entitled "An act to provide for extension of corporation charters."
107.....	AN ACT relating to agricultural fair corporations and providing for county aid for the same.
108.....	AN ACT entitled an act to provide penalties for fraudulent representations relating to the stocks or bonds of incorporated companies.
109.....	AN ACT entitled an act to amend Chapter seventy-four (74) of the Session Laws of 1905 relating to trust companies.
110.....	AN ACT entitled an act to amend section two of Chapter 73 of the Session Laws of 1905 relating to deposit of securities with state treasurer.

COURTS

111.....	AN ACT entitled an act amending section 653 of the Revised Political Code of 1903 relating to terms of court for the first judicial circuit.
112.....	AN ACT to fix the terms of court in the counties of the fourth judicial circuit.
113.....	AN ACT fixing terms of court in the sixth judicial circuit.
114.....	AN ACT fixing the terms of the circuit court within and for the ninth judicial circuit.
115.....	AN ACT to amend section 2, Chapter 114 of the Session Laws of 1903, relating to the time for holding terms of court in the ninth judicial circuit.
116.....	AN ACT entitled an act to amend the Code of Civil Procedure of Revised Code of South Dakota, 1903, relating to the manner of commencing civil actions to the pleadings in civil actions and to provisional remedies in civil actions.
117.....	AN ACT entitled an act to provide for the filing of certificates of qualifications of clerks of courts in the office of the secretary of state and making such certificate evidence thereof.
118.....	AN ACT entitled an act to amend section 171 of the Code of Civil Procedure of the Revised Code of South Dakota, 1903, relating to the justification of sureties on arrest and bail.
119.....	AN ACT to regulate the fees of bailiffs and jurors in the circuit court.
120.....	AN ACT to provide for appeal in criminal cases.
121.....	AN ACT entitled an act relating to the conveyance of real property by guardian.
122.....	AN ACT to amend section 111 of Chapter 9 of the Code of Civil Procedure of the Revised Code of South Dakota relating to service of summons.
123.....	AN ACT to amend section 141 of the Justice Code of the state of South Dakota Revised Code of 1903 relating to verdicts and judgments.
124.....	AN ACT entitled an act providing for appeals from decisions of boards of equalization of assessment of property.
125.....	AN ACT relating to the probate of estates of nonresidents.
126.....	AN ACT relating to a sufficient description of money in the indictment or information for the prosecution of robbery or larceny.
127.....	AN ACT to amend section 112 of the Revised Code of Civil Procedure of 1903 of the state of South Dakota relating to the service of summons.
128.....	AN ACT to amend section 3, Article 1 of Chapter 1 of Justice Code, relating to the jurisdiction of justices courts.
129.....	AN ACT entitled an act to amend section 86 of the Revised Code of Criminal Procedure.
130.....	AN ACT entitled an act prohibiting the law partners of county judges from practicing in the courts over which their partners preside.

DISCRIMINATION

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| 131..... | AN ACT to define and prohibit unfair competition and discrimination and to define the powers and duties of the attorney general in regard thereto. |
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DIVORCE

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| 132..... | AN ACT relating to action for divorce and the proceedings therein. |
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DEPARTMENT OF HISTORY

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| 133..... | AN ACT entitled an act providing that certified copies of papers or parts thereof in the custody of the department of history may be accepted in evidence as proof of service in actions and proceedings in this state. |
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DRAINAGE

- | | |
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| 134..... | AN ACT providing for the establishment, construction and maintenance of drainage and levees in counties whenever such drainage shall be conducive to the public health, convenience or welfare, or whenever it shall be necessary or practicable for drainage of agricultural lands. |
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EDUCATION

- | | |
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| 135..... | AN ACT to establish a uniform system of education for the state of South Dakota and to repeal certain legislation relating thereto. |
| 136..... | AN ACT entitled an act compelling the attendance of Indian children at schools when tuition, lodging and board are furnished at the expense of the United States. |
| 137..... | AN ACT entitled an act for the compulsory education of the deaf and blind. |
| 138..... | AN ACT entitled an act for the protection of the state, county, municipal corporations and school districts of persons furnishing materials and labor for the construction or repair of public or school buildings. |

ELECTIONS

- | | |
|----------|--|
| 139..... | AN ACT to provide for the holding of primary elections for the purpose of making party nominations, electing party delegates and committeemen and establishing rules for regulating the same. |
| 140..... | AN ACT to repeal Chapter 107 of the Session Laws of 1905 regulating primaries and conventions. |
| 141..... | AN ACT prescribing the qualifications of voters in school districts situated in two counties. |
| 142..... | AN ACT prohibiting corporations for profit from making contributions to candidates for nomination or election to public office or to political committees or members or officers thereof, or to party workers for political purposes, and providing penalties for the violation of this act. |

ELECTIONS—Continued

143.....	AN ACT to amend section 1007 of the Revised Political Code of 1903, as amended by Chapter 136 of Session Laws of 1903, relating to the election of township officers at the annual meeting.
144.....	AN ACT entitled an act to amend sections 1871 and 1933, Chapter 19, of the Revised Political Code of 1903, relating to the per diem of judges and clerks of election.
145.....	AN ACT entitled an act regulating elections in cities and towns.
146.....	AN ACT to regulate campaign and election expenses and to require accounts thereof to be kept and filed and reports thereof to be made, and providing penalties for the violations of this act.

ELECTRICIANS

147.....	AN ACT giving electricians power to operate electric baths and batteries for the treatment of diseases.
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FAIR GROUNDS

148.....	AN ACT vacating and annulling any and all plats, including streets and alleys, now of record and affecting the property owned by the state of South Dakota and used as a state fair ground in the city of Huron, state of South Dakota.
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FEES

149.....	AN ACT to amend Chapter 141 of the Session Laws of 1903 entitled "An act fixing the fees of the office of secretary of state."
150.....	AN ACT entitled an act to amend section 1092 of the Revised Political Code of the state of South Dakota relating to fees of town officers.

FOOD AND DAIRY

151.....	AN ACT to provide for a state food and dairy commission, to prevent the adulteration, misbranding and imitation of foods, beverages and condiments, candies, drugs and medicines, meats and fish, and to regulate the manufacture and sale thereof and of dairy products.
152.....	AN ACT to define and grade cream and to regulate and prevent the manufacture of decomposed or deleterious cream into creamery butter and to prevent fraud in the manufacture of butter.
153.....	AN ACT entitled an act to regulate the sale of stock food within the state of South Dakota.

FOREST RESERVE

154.....	AN ACT entitled an act prescribing the manner of distributing the funds received by the state of South Dakota from the forest reserve of the United States to counties in which forest reserves are situated.
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GAMBLING

155.....	AN ACT relating to gambling.
156.....	AN ACT entitled an act to amend section 398, Revised Penal Code of 1903, relating to money to be recovered in civil action won at game of chance.

GAME

157.....	AN ACT entitled an act to protect Mongolian pheasants, English pheasants, golden pheasants, Reeves pheasants, Japanese pheasants, Temmicks pheasants, Trapagan pheasants and ring-neck or China Torquatus pheasants, making it unlawful to kill, hunt, trap or pursue the same or to destroy the nests or eggs of the same and providing penalties therefor.
158.....	AN ACT entitled an act for the protection and preservation of quail.
159.....	AN ACT for the protection of birds and their nests and eggs.

GAS AND WATER

160.....	AN ACT to punish persons unlawfully obtaining and using gas and water.
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HIGHWAYS

161.....	AN ACT providing for the granting, conveying and dedicating certain real estate by the state of South Dakota to the public for highway purposes.
162.....	AN ACT entitled an act relating to the control, supervision, construction and repairs of highways and bridges.

HORSES

163.....	AN ACT entitled an act supplementary to Chapter 20 of the laws of 1905 relating to the shipment of horses.
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HORTICULTURAL SOCIETY

164.....	AN ACT to amend section 8, Chapter 215 of the Session Laws of 1903, relating to the State Horticultural Society.
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HOTELS

165.....	AN ACT entitled an act defining and relating to hotels, inns and public lodging houses, prescribing rules and regulations for their operation as to insure the safety, health and comfort of their guests through fire protection and sanitary measures, providing for the appointment of inspectors of hotels, prescribing their duties and qualifications and fixing their compensation, providing for the raising and expenditure of a "hotel inspection fund," and prescribing penalties and fixing punishment for the violation of the provisions thereof.
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INITIATIVE AND REFERENDUM

166.....	AN ACT to amend article three (3) of Chapter (2) of the Political Code providing for the initiative and referendum.
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INSURANCE

167.....	AN ACT adding to the duties of the commissioner of insurance and defining the same and providing for the necessary funds to maintain all expense incurred in the discharge of said duties.
168.....	AN ACT to require an annual apportionment and accounting of surplus funds by life insurance companies doing business in this state on deferred dividend policies heretofore issued.
169.....	AN ACT to amend section 151 of the Political Code, Revised Statutes of 1903, relating to the salary of the inspector of mines of this state.
170.....	AN ACT entitled an act to amend section 2 of Chapter 126 of the Session Laws of 1905, relating to standard form of fire insurance policy.
171.....	AN ACT to amend sections 583 and 586 of the Revised Civil Code of 1903 relating to stock insurance companies.
172.....	AN ACT providing for the insurance of live stock.

INTOXICATING LIQUORS

173.....	AN ACT to provide for the enforcement of local option laws prohibiting the sale of intoxicating liquors as a beverage without a permit.
174.....	AN ACT entitled an act regulating and limiting the number of dealers in intoxicating liquors which may be licensed.
175.....	AN ACT to amend section 2859 of the Revised Political Code of 1903 relating to the sale of intoxicating liquors in proximity to public or private schools and churches.
176.....	AN ACT to amend Chapter 146 of the Session Laws of 1905 entitled "An act to amend section 2860 of the Revised Political Code of 1903, as amended by Chapter 191 of the laws passed at the eighth session of the legislature of the state of South Dakota Session Laws 1903, relating to the sale of intoxicating liquors by pharmacists."
177.....	AN ACT entitled an act forbidding the sale of intoxicating liquors within one-third of a mile of any college or academy providing regular classical and scientific courses.

INTOXICATING LIQUORS—Continued

- 178..... AN ACT to amend section 1546 of the Revised Political Code of 1903, being section 1 of Chapter 143 of the Session Laws of the state of South Dakota for 1901, entitled an act to provide for suppressing and preventing the illegal sale of intoxicating liquors in cities and incorporated villages and towns.
- 179..... AN ACT entitled an act to submit to the electors of the state of South Dakota for their approval at the next general election under the provisions of section 1 of Article 3, Chapter 2 of the Political Code, a law providing for an act to amend Chapter one hundred sixty-six of the Session Laws of 1903, being an act to amend section 2856 of the Revised Political Code of 1903, being section 23 of Chapter 72 of Session Laws of the state of South Dakota for 1897, entitled an act to provide for the licensing, restricting and regulation of the business of the manufacture and sale of spirituous and intoxicating liquors.

IRRIGATION

- 180..... AN ACT entitled an act prescribing regulations for the appropriation, distribution and use of water for irrigation, mining, water power and other beneficial uses.

LEGAL HOLIDAYS

- 181..... AN ACT to amend sections 2458 and 2459 of the Revised Civil Code of 1903 designating legal holidays.

LEGISLATIVE LOBBY

- 182..... AN ACT entitled an act to regulate the employment of legislative lobby counsel and agents, to prohibit legislative counsel and agents from attempting to influence members of the legislature other than by appearance before committees thereof, to provide for the return of legislative expenses and prescribing penalties and fixing punishment for the violation of the provisions thereof.

LIBRARIES

- 183..... AN ACT defining the supreme court library and providing for its custody and care.
- 184..... AN ACT entitled an act to amend section 1527 of the Political Code of 1903 relating to the method of providing funds for free libraries.
- 185..... AN ACT entitled an act establishing a division of legislative reference in the state library.

MAGISTRATES

- 186..... AN ACT entitled an act amending section 91 of the Revised Code of Criminal Procedure of 1903 relating to magistrates.

MEMORIAL DAY

- 187..... AN ACT entitled an act authorizing city councils and school boards and county commissioners to make appropriations to defray the necessary expenses incident to the observance of Memorial Day.

MORTGAGES

- 188..... AN ACT to amend section 2095 of the Civil Code of 1903 relating to chattel mortgages.
- 189..... AN ACT to amend section 645 of the Code of Civil Procedure of the state of South Dakota Revision of 1903 relative to certificates of mortgage foreclosure sales.
- 190..... AN ACT to amend section 2056 of the Civil Code of 1903 relating to the assignment of real estate mortgages.

MUNICIPAL COURTS

- 191..... AN ACT entitled an act providing for municipal courts, defining the jurisdiction thereof, providing for the practice therein and fixing the terms and the salary of the judges thereof.

NORTHERN HOSPITAL

- 192..... AN ACT to amend sections five (5) and seven (7) of Chapter one hundred and thirty-nine (139) of the Session Laws of 1905 relating to the class of persons who may be committed to the Northern Hospital for Insane.

NOTICE

- 193..... AN ACT providing that certain instruments shall be deemed to impart notice, notwithstanding the absence of any acknowledgment or any defect, omission or informality in the execution or acknowledgment thereof and providing for the reading of evidence of such instruments or the records or certified copies thereof.

NURSERY

- 194..... AN ACT entitled an act relating to the inspection and registration of fruit tree nurseries and regulation of nursery agent.

OSTEOPATHY

- 195..... AN ACT creating a state board of osteopathic examiners and registration to regulate the practice of osteopathy in the state of South Dakota, and to license osteopathic physicians and to prescribe penalties for the violation of this act.

PAINT

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| 196..... | AN ACT entitled an act to prevent deception in the sale of paint. |
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PARENTS

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| 197..... | AN ACT to amend section 341 of the Revised Penal Code of 1903 of South Dakota, relating to the failure of the husband to support the wife, and the failure of parents to support their children, and prescribing the penalty therefor. |
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PAROLE

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| 198..... | AN ACT to amend sections 1 and 2 of Chapter 144 of the Session Laws of 1905, entitled an act to provide for the conditional release and parole of convicts confined in the penitentiary, regulating their conduct during such period of parole, providing for the return of convicts violating the conditions of such parole, providing the duties of public officers in connection therewith, and penalty for the failure of a public officer to comply with the terms of this act. |
| 199..... | AN ACT to provide for the parole of inmates of the reform school and prescribing procedure and penalties thereto. |

PEACE OFFICERS

- | | |
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| 200..... | AN ACT entitled an act to confer upon justices of the peace, police justices and municipal judges power to subpoena and examine witnesses before the issuance of a warrant of arrest. |
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PEDDLERS

- | | |
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| 201..... | AN ACT entitled an act to amend section 5, Chapter 190, Session Laws of the state of South Dakota, 1903, relating to peddlers' license. |
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PHYSICIANS AND SURGEONS

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| 202..... | AN ACT entitled an act to amend section 10 of Chapter 176 of the Session Laws of 1903 relating to the licensing of physicians and surgeons and regulating the practice of medicine. |
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PRISON

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| 203..... | AN ACT to amend section 152 of the Revised Penal Code of 1903 relating to the definition of the term prison. |
| 204..... | AN ACT to provide compensation for counties for keeping prisoners confined in jail by authority of the United States or other states or territories or of counties other than the county which is keeping such prisoners. |

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205.....	AN ACT creating a state printing commission, defining their powers and duties, fixing the compensation and regulating the manner in which printing and binding for the state of South Dakota shall be done
206.....	AN ACT entitled an act to amend section 52 of the Revised Political Code 1903, relating to publication of statutes.

RAILROAD COMMISSIONERS

207.....	AN ACT relating to the orders of the board of railroad commissioners.
208.....	AN ACT entitled an act to amend section 195 of the Revised Political Code relating to the salaries of railroad commissioners and secretary of the board of railroad commissioners.
209.....	AN ACT prescribing the duties of the railroad commissioners relating to the examination of the books and accounts of public warehouses.
210.....	AN ACT providing for a legal adviser and assistant for the board of railroad commissioners.
211.....	AN ACT to authorize, empower and require the board of railroad commissioners in this state to ascertain and determine the true cash value of all the property of every railroad company in this state used in the operation and maintenance of their respective railways, and to employ experts and such other assistance as may be necessary to ascertain and determine such value.

RAILROADS

212.....	AN ACT relating to railroad connections, transfer facilities, joint traffic, joint rates and the powers and duties of the board of railroad commissioners in regard thereto.
213.....	AN ACT entitled an act to amend section 450, Revised Political Code of 1903, relating to a schedule of maximum rates and fares and other things.
214.....	AN ACT entitled an act making it unlawful for any railroad corporation, or company, or common carrier to abandon any established station, remove the depot or to withdraw an agent therefrom without the written consent of the board of railroad commissioners, and providing penalties for the violation thereof.
215.....	AN ACT requiring railroad corporations to pay double the amount of damages incurred from loss of property, injured or destroyed by fires communicated by locomotive engines or from the burning of grass, weeds or rubbish on right of way by employes of such corporations in certain cases.
216.....	AN ACT regulating the handling of freight in carload lots by railroad companies, shippers and consignees and imposing, regulating and equalizing charges and penalties for the use and detention of cars and failure to furnish cars and transport the same.
217.....	AN ACT regulating the construction of railroad lines.
218.....	AN ACT requiring railroad companies to pay double the amount of damage incurred from loss of live stock killed or injured through the negligence of such railroad company in certain cases.

RAILROADS—Continued

219.....	AN ACT relating to liability of common carriers engaged in commerce in the state of South Dakota to their employes.
220.....	AN ACT entitled an act limiting the working hours required of or permitted to certain employes of common carriers and prescribing the powers and duties of the board of railroad commissioners in regard thereto.
221.....	AN ACT to regulate, restrain and prohibit the soliciting, giving, issuing and accepting of free passes, free tickets, franks and other free privileges, and to prevent discrimination in the issuing and selling of tickets, passes, franks and other privileges.

REFORM SCHOOL

222.....	AN ACT changing the name of the South Dakota Reform School.
223.....	AN ACT to provide for the transfer of feeble minded and epileptic youth from the Reform School to the Northern Hospital.

SCHOOL AND PUBLIC LANDS

224.....	AN ACT entitled an act to authorize the commissioner of school and public lands to sell pine timber grown upon school and public lands of this state.
225.....	AN ACT entitled an act to amend section 393, Article 1, Chapter 6, of the Revised Political Code of 1903, relating to fees derived from the lease and sale of school and public lands.
226.....	AN ACT entitled an act providing for the classification and sale of indemnity, common school and endowment lands in the state of South Dakota.
227.....	AN ACT entitled an act to promote the sinking of artesian wells upon school and public lands.
228.....	AN ACT to amend section 385 of the Revised Code of 1903 as amended by Chapter 145 of the Laws of 1905 relating to patents to state lands.
229.....	AN ACT entitled an act directing the board of regents of education to make selections of state or school lands for experimental farm purposes.
230.....	AN ACT entitled an act placing under the control of the board of regents of education the remainder of the educational and charitable lands for the support of sub-stations for prosecuting experiments in agriculture.

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231.....	AN ACT to prevent fraudulent practice in respect to secret societies.
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| 232..... | AN ACT to empower and authorize county commissioners in all organized counties in this state to levy tax, appropriate money and cause to be erected soldiers' monuments. |
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| 233..... | AN ACT to provide codes and Session Laws for the law department of the state university at Vermillion, South Dakota. |
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SUNDAY

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| 234..... | AN ACT to prohibit theatrical and other performance on Sunday within the state of South Dakota and prescribing the punishment therefor. |
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SUPREME COURT REPORTS

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| 235..... | AN ACT to amend section 645 of the Revised Political Code of 1903 relating to the distribution of supreme court reports. |
| 236..... | AN ACT to provide for a set of South Dakota supreme court reports for certain state officers. |

SURVEYORS

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| 237..... | AN ACT fixing the fees of county surveyors. |
| 238..... | AN ACT to amend section 1496, Article 14, of the Revised Political Code of 1903, relative to filing of town plats. |

TELEPHONE

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| 239..... | AN ACT relating to telephone companies, creating the board of telephone commissioners and defining its powers and duties. |
| 240..... | AN ACT to provide the manner and place of record and the notice and effect of trust deeds and mortgages of telephone companies. |

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| 241..... | AN ACT to amend section 1426 of Chapter 15 of the Revised Political Code of 1903 relating to incorporated towns. |
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TOWNSHIP BOARDS OF SUPERVISORS

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| 242..... | AN ACT authorizing township boards of supervisors to hold meetings in the city located in the government township of which they are officers. |
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TOWN OFFICERS

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| 243..... | AN ACT to amend sections 1431 and 1456 of Chapter 15 of the Revised Political Code of 1903 of the state of South Dakota relating to town officers. |
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TRESPASS OF ANIMALS

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| 244..... | AN ACT entitled an act to provide for damages for the trespass of animals and for the collection of such damages. |
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UNION COUNTY

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| 245..... | AN ACT entitled an act attaching certain lands to the county of Union, South Dakota, and submitting such change of boundary to a vote of the electors thereof. |
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VITAL STATISTICS

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| 246..... | AN ACT supplementary to Chapter 63 of the laws of 1905 relating to the collection, preservation and publication of vital statistics. |
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WATER WORKS

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| 247..... | AN ACT entitled an act to authorize cities of the first class or cities under commission having a population of ten thousand or over to provide for the management, control, operation and extension of a system of waterworks therein by means of assessment upon all taxable property therein and the levy and collection of taxes and for the credit upon such taxes of moneys paid by private consumers. |
| 248..... | AN ACT for the repeal of an act entitled "An act entitled an act to empower cities of the first class to sell, lease or otherwise dispose of any system or part of system of waterworks, constructed and owned by such city," being Chapter 176 of the Session Laws of 1905. |
| 249..... | AN ACT entitled an act authorizing the county commissioners of counties to accept for use as public records, books of waterusers' associations containing printed copies of their articles of incorporation and forms of subscription to stock and regulating the charges for recording the stock subscription. |

WEEDS

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| 250..... | AN ACT to provide for the destruction of weeds upon public highways. |
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WOLF BOUNTY

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| 251..... | AN ACT entitled an act amending section 3121 of the Political Code of 1903, as amended in Chapter 177 of the Session Laws of 1905, providing amount of appropriation for the payment of bounty on wolves and mountain lions. |
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AUTHENTICATION

STATE OF SOUTH DAKOTA }
Department of State } ss.

I, D. D. Wipf, Secretary of State of the state of South Dakota, do hereby certify that the laws contained in this volume are true and correct copies of the original enrolled bills and joint resolutions proposing amendments to the Constitution, passed by the legislature of this state at the tenth session thereof, begun and held at Pierre, January 8th, A. D. 1907, and concluded March 8th, A. D. 1907, as approved by the governor, or which became law by virtue of the limitation of Section 9, Article 4 of the Constitution of this state, and now on file in this office, with the exceptions of corrections of certain obvious errors, which corrections have been made, and appear in brackets, in all laws passed and approved prior to March 5th, 1907. On March 5th Senate Bill No. 269, amending Section 52 of the Revised Political Code of 1903, taking away the authority of the secretary of state to correct obvious errors, was approved by the governor and filed in this office; consequently, all bills approved and all bills which became law by virtue of the limitation of Section 9, Article 4 of the Constitution, subsequent to March 5th, 1907, appear in this volume without corrections of grammatical errors.

In witness whereof, I have hereunto set my hand and affixed the great seal of South Dakota, at Pierre, this 27th day of March, A. D. 1907.

[SEAL]

D. D. WIPF,
Secretary of State.

THE LAWS

ACCOUNTS

CHAPTER 1

(H. B. 175)

RELATING TO AUDITING ACCOUNTS

AN ACT Entitled an Act to Amend Section 1444, Article 3, Chapter 15, Revised Political Code of 1903, Relating to Auditing Accounts.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 1444, article 3, chapter 15, Revised Political Code of 1903, be and is hereby amended to read as follows:

Section 1444. No account or claim against said town shall be audited or allowed by the board of trustees unless it be made out fully and itemized, and every such account audited shall be numbered from one upwards in the order they were presented, and a memorandum of the same entered upon a book to be kept exclusively for that purpose, but no accounts or claims shall ever be audited or allowed for making improvements for the benefit of private individuals within the corporate limits, nor for grading, draining or bridging outside of said limits without a majority vote of all legal voters of said incorporated town.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 4, 1907.

ACKNOWLEDGMENTS

CHAPTER 2

(H. B. 231)

RELATING TO THE EXECUTION AND ACKNOWLEDGMENT OF DEEDS AND OTHER INSTRUMENTS

AN ACT for an Act Amending Chapter One of the Session Laws of 1905, Relating to the Execution and Acknowledgment of Deeds, Mortgages, Assignments of Mortgages, Release of Mortgages and Other Instruments by Corporations, and Legalizing Acknowledgments Heretofore Made by Corporations.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Power of Officer] That chapter one of the Session Laws of 1905 be, and the same is hereby amended to read as follows:

That any officer of a corporation, authorized by the charter or articles of incorporation, the by-laws, or the consent of the stockholders or of the board of directors of such corporation, may execute deeds, mortgages, assignment of mortgages, release of mortgages and all other instruments in the name of such corporation and acknowledge the same on behalf of such corporation.

§ 2. Corporate Seal] The corporate seal of any corporation attached to a deed, mortgage, assignment of mortgage, release of mortgage or other instruments executed and acknowledged by any officer of such corporation, shall be prima facie evidence that such officer was duly authorized to execute such instrument on behalf of such corporation.

§ 3. Acts Legalized] All deeds, mortgages, assignment of mortgages, release of mortgages and other instruments heretofore executed and acknowledged by any officer of a corporation and which are executed and acknowledged in accordance with the provisions of this act, and which would be valid if hereafter executed, are hereby declared to be legal and valid for all purposes, notwithstanding the fact that the same may not have been executed or acknowledged by an officer of a corporation heretofore authorized to acknowledge instruments on behalf of a corporation.

§ 4. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

§ 5. Emergency] An emergency is hereby declared to exist and this act shall be in force and effect from and after its passage and approval.

Approved February 27, 1907.

CHAPTER 3

(H. B. 227)

RELATING TO PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS

AN ACT to Amend Article 3 of Chapter 4 of the Civil Code of 1903, Relating to Proof and Acknowledgment of Instruments.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That article 3, of chapter 4, of the Civil Code of 1903, relating to proof and acknowledgment of instruments, be amended to read as follows:

Article 3. Proof and Acknowledgment of Instruments.

Section 970. The proof or acknowledgment of an instrument may be made at any place within this state, before a justice or clerk of the supreme court, or notary public.

Section 971. The proof or acknowledgment of an instrument may be made in this state within the judicial circuit, county, subdivision or city, for which the officer was elected or appointed, before either:

1. A judge or clerk of a court of record; or,
2. A mayor of a city; or
3. A register of deeds; or
4. A justice of the peace; or
5. A United States circuit or district court commissioner; or,
6. A county auditor.

Section 972. The proof or acknowledgment of an instrument may be made without the state, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge, or clerk of any court of record of the United States.

2. A justice, judge, or clerk of any court of record of any state or territory; or,

3. A notary public; or,

4. Any officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

5. A commissioner appointed for the purpose by the governor of this state, pursuant to the Political Code.

Section 973. The proof or acknowledgment of an instrument may be made without the United States, before either:

1. An ambassador, a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

2. A consul, vice consul, or consular agent of the United States,

resident in the country where the proof or acknowledgement is made; or,

3. A judge, clerk, register or commissioner of a court of record of the country where the proof or acknowledgment is made; or,

4. A notary public of such country; or,

5. An officer authorized by the laws of the country where the proof of acknowledgment is taken to take proof or acknowledgment; or,

6. When any of the officers mentioned in this article are authorized to appoint a deputy, the acknowledgment or proof may be taken before such deputy.

7. All proofs or acknowledgments heretofore taken according to the provisions of this section are hereby declared to be sufficiently authenticated and to be entitled to record, and all such record hereafter made shall be notice of the contents of the instrument so recorded.

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 1, 1907.

ACTS LEGALIZED

CHAPTER 4

(H. B. 220)

LEGALIZING ACTIONS OF COUNTY COURTS IN CERTAIN CASES

AN ACT Entitled an Act to Legalize the Order Dispensing With the Regular Administration, Findings of Fact and Final Decree of Distribution of the County Court, Made Under the Provisions of Chapter 113, Session Laws 1903.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Decree and Distribution Legalized] That in any county court, when a petition for the appointment of an administrator has heretofore been filed and presented and notice of said hearing has been given, as provided by section 88 of the Probate Code, and the

court without further notice has ordered that the regular administration be dispensed with, the said order and the findings of fact and final decree of distribution made and filed in such estate are hereby validated, legalized and declared to be of the same force and effect as if notice had been given as provided by chapter 113, Session Laws, 1903.

Approved March 1, 1907.

CHAPTER 5

(H. B. 244)

LEGALIZING ACT OF COUNTY OFFICERS OF MARSHALL COUNTY

AN ACT Entitled an Act Legalizing the Action of the Board of County Commissioners and County Auditor and Treasurer of Marshall County, Relating to Court House Building Funds.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Acts Legalized] All acts of the board of county commissioners, of the county auditor, and the county treasurer of Marshall county, South Dakota relating to the borrowing of money to erect a county court house in said county, under the direction of a vote of the people of said county at a special election of the voters of said county called and held for the purpose, the covering of such money into the court house fund and the payment thereof upon duly audited warrants for the erection of such county court house are hereby legalized and confirmed.

§ 2. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] An emergency is hereby declared to exist and this act shall take effect from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 6

(S. B. 242)

LEGALIZING THE INCORPORATION OF TOWNS

AN ACT Legalizing the Incorporation of Towns in This State, and all Proceedings and Ordinances Had and Passed by the Board of Trustees of all Such Towns in Certain Cases Where Defects, Omissions or Informalities Exist in the Incorporation of Such Towns.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Acts Legalized] In all cases where application has been made for the incorporation of any town in this state which fails to make an accurate survey and map of the territory embraced in the limits of any such town, or where an accurate census of the resident population has not been made, or where such town has been incorporated without having a sufficient number of qualified voters as required by law, or where such survey, map and census have not been left at the place required by law within such proposed town for the period required by existing law, or where any defects, omission or informality exists in the application for incorporation before the board of county commissioners or where any defects exist in the proceedings of the board of county commissioners in authorizing such incorporation, and all ordinances, official proceedings and taxation proceedings had by such towns within the proper scope and authority of the statutes concerning such incorporated towns, are in all things legalized, ratified and declared to be valid, notwithstanding any errors, omissions or informalities therein.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall take effect and be in force, from and after its passage and approval.

Approved March 9, 1907.

CHAPTER 7

(H. B. 219)

LEGALIZING TRANSFER OF REAL PROPERTY BY GUARDIANS IN CERTAIN CASES

AN ACT Entitled an Act to Legalize the Transfer of Real Property by Guardian in Certain Cases.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Deeds Legalized] When the real property has been here-

tofore allotted to any person under the provisions of the statutes of the United States and a guardian has sold and conveyed by deed all the right, title and interest of his ward in and to such real property, upon order of the county court, as provided by section 402 of the Probate Code, and such deed has been approved by the department of the interior and delivered, all such deeds are hereby ratified and made legal and shall convey and vest in the grantee named therein all the right, title and interest of such ward in and to such real property.

Approved February 26, 1907.

CHAPTER 8

(S. B. 260)

LEGALIZING INCORPORATION OF CITIES OF THE THIRD CLASS

AN ACT Legalizing the Incorporation of Cities of the Third Class in this State, and all Proceedings and Ordinances Had and Passed by the Board of Aldermen of all Such Cities in Certain Cases Where Defects, Omissions of Informalities Exist in the Incorporation of such Cities.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Acts Legalized] In all cases where application has been made for the incorporation of any city of the third class in this state which fails to make an accurate survey and map of the territory embraced in the limits of any such city, or where an accurate census of the resident population has not been made, or where such city has been incorporated without having a sufficient number of qualified voters as required by law, or where such survey, map and census have not been left at the place required by law within such proposed city for the period required by existing law, or where any defects, omission or informality exists in the application for incorporation before the board of county commissioners or where any defects exist in the proceedings had by such cities within the proper scope and authority of the statutes concerning such incorporated cities, the same are in all things legalized, ratified and declared to be valid, notwithstanding any errors, omissions or informalities therein.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall take effect and be in force, from and after its passage and approval.

Approved March 5, 1907.

CHAPTER 9

(H. B. 124)

LEGALIZING CERTAIN INSTRUMENTS

AN ACT to Legalize and Validate all Deeds, Mortgages and Other Instruments Affecting Real Estate Only, Running to or Executed by any Foreign Corporation, which has not Complied with the Laws of This State and Formerly Territory Governing such Foreign Corporation.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Legalizing Certain Instruments] That all deeds, mortgages and other instruments affecting the title to lands only running to or attempting to convey any right, title or interest in and to real estate to a foreign corporation which at the time of such conveyance had not complied with the laws of this state and formally territory of Dakota relating to duties of foreign corporations and all deeds, mortgages and other instruments executed by such foreign corporations, are hereby declared legal, valid and of full force and effect, provided, however, and upon condition that such foreign corporations shall at any time hereafter comply with the laws of this state relating to the duties of foreign corporations, notwithstanding the fact that such laws of this state may now be and hereafter have been to the contrary.

§ 2. Repeal] All acts or parts of acts in conflict herewith are hereby repealed.

§ 3. Emergency] An emergency is hereby declared to exist, and this act shall be in effect from and after its passage and approval.

Approved February 26, 1907.

CHAPTER 10

(S. B. 139)

LEGALIZING THE INCORPORATION OF TURTON

AN ACT Entitled "An Act Legalizing the Incorporation of the Town of Turton, Spink County, South Dakota, and Official Acts Thereunder."

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Acts Legalized] That the acts of the county commissioners of the county of Spink, in the state of South Dakota, incorporating

and organizing the town of Turton, in said county of Spink, are hereby legalized and made valid from and after the date of said incorporation, and that all acts necessary to render said incorporation legal and valid shall be deemed to have been done as provided by law.

§ 2. Official Acts Legalized] That all the acts of the officers of said town and all ordinances and taxation proceedings therein had within the proper scope and authority of the statutes of this state concerning incorporated towns and their officers are hereby ratified and declared to be valid notwithstanding any errors, clerical or otherwise, in the said incorporation proceedings.

§ 3. Emergency Declared] Whereas, an emergency is hereby declared to exist, this act shall take effect and be in force from and after its passage and approval.

Approved February 18, 1907.

AGE OF CONSENT

CHAPTER 11

(H. B. 258)

RELATING TO THE AGE OF CONSENT

AN ACT to Amend Chapter 26, Section 325, Revised Penal Code, Relating to Age of Consent.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Rape Defined] That chapter 26, section 325 of the Revised Penal Code, be, and the same is hereby amended to read as follows:

Section 325. Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of eighteen years.
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. Where she resists, but resistance is overcome by force or violence.

4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution.

5. Where she is prevented from resisting by any intoxicating, narcotic or anaesthetic agent, administered by or with the privity of the accused.

6. Where she is at the time unconscious of the nature of the act, and this is known to the accused.

7. Where she submits under a belief that the person committing the act is her husband, and this belief is induced by artifice, pretense or concealment practiced by the accused with intent to induce such belief.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Approved March 7, 1907.

AGRICULTURAL COLLEGE

CHAPTER 12

(S. B. 192)

CHANGING THE NAME OF THE SOUTH DAKOTA AGRICULTURAL COLLEGE

AN ACT Changing the Name of the South Dakota Agricultural College.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Name Changed] The name of the Agricultural College located at Brookings, South Dakota, shall hereafter be "State College of Agriculture and Mechanic Arts."

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 5, 1907.

APPORTIONMENT

CHAPTER 13

(H. B. 276)

AN ACT Entitled an Act to Redistrict the State of South Dakota Into Legislative Districts and to Apportion the Number of Senators and Representatives Therein.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Number of Districts and Members] That the state of South Dakota shall be divided into forty-two (42) senatorial districts and fifty-three (53) representative districts as hereinafter specified and that the senate shall consist of forty-five members and the house of representatives shall consist of one hundred and four members.

The legislative districts shall be as follows, to-wit:

§ 2. Senatorial Districts]

District number one shall consist of the county of Union, and be entitled to one senator.

District number two shall consist of the county of Clay, and be entitled to one senator.

District number three shall consist of the county of Yankton, and be entitled to one senator.

District number four shall consist of the county of Bon Homme, and be entitled to one senator.

District number five shall consist of the county of Lincoln, and be entitled to one senator.

District number six shall consist of the county of Turner, and be entitled to one senator.

District number seven shall consist of the county of Hutchinson, and be entitled to one senator.

District number eight shall consist of the county of Charles Mix, and be entitled to one senator.

District number nine shall consist of the county of Douglas, and be entitled to one senator.

District number ten shall consist of the county of Minnehaha, and be entitled to two senators.

District number eleven shall consist of the county of McCook, and be entitled to one senator.

District number twelve shall consist of the counties of Hanson and Miner, and be entitled to one senator.

District number thirteen shall consist of the county of Davison, and be entitled to one senator.

District number fourteen shall consist of the county of Aurora, and be entitled to one senator.

District number fifteen shall consist of the counties of Jerauld and Sanborn, and be entitled to one senator.

District number sixteen shall consist of the counties of Brule and Buffalo, and be entitled to one senator.

District number seventeen shall consist of the county of Gregory, and be entitled to one senator.

District number eighteen shall consist of the county of Moody, and be entitled to one senator.

District number nineteen shall consist of the county of Lake, and be entitled to one senator.

District number twenty shall consist of the county of Brookings, and be entitled to one senator.

District number twenty-one shall consist of the county of Kingsbury, and be entitled to one senator.

District number twenty-two shall consist of the county of Beadle, and be entitled to one senator.

District number twenty-three shall consist of the county of Hand, and be entitled to one senator.

District number twenty-four shall consist of the counties of Hyde, Hughes and Sully, and be entitled to one senator.

District number twenty-five shall consist of the counties of Lyman and Stanley, and be entitled to one senator.

District number twenty-six shall consist of the county of Deuel, and be entitled to one senator.

District number twenty-seven shall consist of the county of Hamlin, and be entitled to one senator.

District number twenty-eight shall consist of the county of Codrington, and be entitled to one senator.

District number twenty-nine shall consist of the county of Clark, and be entitled to one senator.

District number thirty shall consist of the county of Spink, and be entitled to one senator.

District number thirty-one shall consist of the county of Grant, and be entitled to one senator.

District number thirty-two shall consist of the county of Roberts, and be entitled to one senator.

District number thirty-three shall consist of the county of Marshall, and be entitled to one senator.

District number thirty-four shall consist of the county of Day, and be entitled to one senator.

District number thirty-five shall consist of the county of Brown and be entitled to two senators.

District number thirty-six shall consist of the counties of Faulk and Potter, and be entitled to one senator.

District number thirty-seven shall consist of the counties of Edmunds and Walworth, and be entitled to one senator.

District number thirty-eight shall consist of the counties of Campbell and McPherson, and be entitled to one senator.

District number thirty-nine shall consist of the county of Lawrence, and be entitled to two senators.

District number forty shall consist of the county of Pennington and be entitled to one senator.

District number forty-one shall consist of the counties of Meade and Butte, and be entitled to one senator.

District number forty-two shall consist of the counties of Custer and Fall River, and be entitled to one senator.

§ 3. Representative Districts]

District number one shall consist of the county of Union and be entitled to three representatives.

District number two shall consist of the county of Clay and be entitled to two representatives.

District number three shall consist of the county of Yankton and be entitled to three representatives.

District number four shall consist of the county of Bon Homme and be entitled to three representatives.

District number five shall consist of the county of Lincoln and be entitled to three representatives.

District number six shall consist of the county of Turner and be entitled to four representatives.

District number seven shall consist of the county of Hutchinson and be entitled to three representatives.

District number eight shall consist of the county of Douglas and be entitled to one representative.

District number nine shall consist of the county of Charles Mix and be entitled to two representatives.

District number ten shall consist of the county of Minnehaha and be entitled to seven representatives.

District number eleven shall consist of the county of McCook and be entitled to two representatives.

District number twelve shall consist of the county of Hanson and be entitled to one representative.

District number thirteen shall consist of the county of Davison and be entitled to two representatives.

District number fourteen shall consist of the county of Sanborn and be entitled to one representative.

District number fifteen shall consist of the county of Aurora and be entitled to one representative.

District number sixteen shall consist of the county of Jerauld and be entitled to one representative.

District number seventeen shall consist of the county of Brule and be entitled to one representative.

District number eighteen shall consist of the county of Miner and be entitled to one representative.

District number nineteen shall consist of the county of Gregory and be entitled to one representative.

District number twenty shall consist of the county of Lake and be entitled to two representatives.

District number twenty-one shall consist of the county of Moody and be entitled to two representatives.

District number twenty-two shall consist of the county of Brookings and be entitled to four representatives.

District number twenty-three shall consist of the county of Kingsbury and be entitled to three representatives.

District number twenty-four shall consist of the county of Beadle and be entitled to two representatives.

District number twenty-five shall consist of the county of Hand and be entitled to one representative.

District number twenty-six shall consist of the county of Hughes and be entitled to one representative.

District number twenty-seven shall consist of the county of Stanley and be entitled to one representative.

District number twenty-eight shall consist of the county of Lyman and be entitled to one representative.

District number twenty-nine shall consist of the county of Deuel and be entitled to one representative.

District number thirty shall consist of the county of Hamlin and be entitled to one representative.

District number thirty-one shall consist of the county of Codington and be entitled to three representatives.

District number thirty-two shall consist of the county of Clark and be entitled to two representatives.

District number thirty-three shall consist of the county of Spink and be entitled to three representatives.

District number thirty-four shall consist of the county of Grant and be entitled to two representatives.

District number thirty-five shall consist of the county of Roberts and be entitled to four representatives.

District number thirty-six shall consist of the county of Marshall and be entitled to one representative.

District number thirty-seven shall consist of the county of Day and be entitled to four representatives.

District number thirty-eight shall consist of the county of Brown and be entitled to four representatives.

District number thirty-nine shall consist of the county of Faulk and be entitled to one representative.

District number forty shall consist of the county of Potter and be entitled to one representative.

District number forty-one shall consist of the county of Edmunds and be entitled to one representative.

District number forty-two shall consist of the county of Walworth and be entitled to one representative.

District number forty-three shall consist of the county of Campbell and be entitled to one representative.

District number forty-four shall consist of the county of McPherson and be entitled to one representative.

District number forty-five shall consist of the county of Custer and be entitled to one representative.

District number forty-six shall consist of the county of Fall River and be entitled to one representative.

District number forty-seven shall consist of the county of Pennington and be entitled to two representatives.

District number forty-eight shall consist of the county of Lawrence and be entitled to five representatives.

District number forty-nine shall consist of the county of Meade and be entitled to one representative.

District number fifty shall consist of the county of Butte, and be entitled to one representative.

District number fifty-one shall consist of the county of Hyde, and be entitled to one representative.

District number fifty-two shall consist of the county of Sully, and be entitled to one representative.

District number fifty-three shall consist of the county of Buffalo, and be entitled to one representative.

§ 4. All acts and parts of acts in conflict with this act are hereby repealed.

Note by the Secretary of State: The foregoing act, having been presented to the governor of this state for his approval, and not having been returned by him to the house of the legislature in which it originated, or to the secretary of state with his objections, within the time prescribed by the constitution has become a law without his approval.

D. D. WIPP,
Secretary of State.

APPROPRIATIONS

CHAPTER 14

(S. B. 288)

GENERAL APPROPRIATION BILL

AN ACT Entitled an Act Providing for an Appropriation for the Expenses of the Executive and Judicial Departments of the State, for the Current Expenses of All the State Officers and Institutions of the State of South Dakota, for the Fiscal Years of 1907 and 1908, Insurance on Public Buildings, for Geological Survey and for State Engineer of Irrigation.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated the following sums of money, or so much thereof as may be necessary, out of any money in the state treasury not otherwise appropriated, for the purpose of paying the expenses of the executive and judicial departments of the state, and for the current expenses of the state officers and institutions of the state of South Dakota, as hereinafter mentioned, for the fiscal years 1907 and 1908, viz: Office expenses per annum and the salaries of the governor, secretary of state, auditor, treasurer, commissioner of school and public lands, attorney general, supreme court, circuit courts, superintendent of public instruction, inspector of mines, public examiner, state veterinary surgeon, maintenance of state house, University of South Dakota at Vermillion, Normal School at Madison, Northern Normal and Industrial School at Aberdeen, Normal school at Spearfish, Normal School at Springfield, Reform School at Plankinton, Agricultural College at Brookings, School of Mines at Rapid city, School for Deaf Mutes at Sioux Falls, South Dakota Blind Asylum at Gary, Penitentiary at Sioux Falls, Hospital for the Insane at Yankton, Northern Hospital for the Insane at Redfield, Soldiers' Home at Hot Springs, state board of charities and corrections, state board of regents, state board of health, state board of medical examiners, state board of agriculture, state board of pharmacy, woman's committee of investigation, railroad commissioners, compensation of clerks in land offices, burial of deceased soldiers and sailors, conveyance of convicts, salary of adjutant general, insurance commissioner's office, insurance on public buildings, for the State Historical Society, for geological survey and for the office of state engineer.

§ 2. Salary of Executive and Judicial Officers.

	1907	1908
For salary of governor.....	\$ 3,000	\$ 3,000
For salary of secretary of state.....	1,800	1,800
For salary of auditor.....	1,800	1,800
For salary of treasurer.....	1,800	1,800
For salary of commissioner of school and public lands	1,800	1,800
For salary of superintendent of public instruction...	1,800	1,800
For salary of attorney general.....	1,000	1,000
For salary of supreme judges at \$3,000 each.....	9,000	9,000
For salary of nine circuit judges at \$2,500 each.....	22,500	22,500
Total.....	<u>\$44,500</u>	<u>\$44,500</u>

§ 3. Expenses of Executive and Judicial Officers.

First—Governor's office.

For salary of private secretary, salary of office clerk and stenographer, stationery, office supplies, postage, railway mileage, hotel bills and other traveling expenses and incidentals.....	\$ 4,000	\$ 4,000
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Second—Secretary of state's office.

For salary of assistant, clerks and stenographer.....	\$ 6,200	\$ 6,200
For stationery, office supplies and incidentals.....	1,800	1,800
For mileage and traveling expenses.....	50	50
For publishing supreme court reports.....	882	882
Total.....	<u>\$ 8,932</u>	<u>\$ 8,932</u>

Third—Auditor's office.

For salary of deputy, clerk hire and stenographer...	\$ 3,520	\$ 3,520
For stationery, incidentals, traveling expenses, board of school and public lands, and state board of equalization	1,700	1,700
Total.....	<u>\$ 5,220</u>	<u>\$ 5,220</u>

Fourth—State treasurer's office.

For salary of deputy and stenographer.....	\$ 2,800	\$ 2,800
For stationery, office supplies and incidentals.....	900	900
Total	<u>\$ 3,700</u>	<u>\$ 3,700</u>

Fifth—Office of commissioner of school and public lands.

	1907	1908
For salary of deputy, clerks and stenographer.....	\$ 9,420	\$ 9,420
For railroad fare, hotel bills, livery, books, express, telegraph and telephone, U. S. plats and incident- als	8,380	8,380
For advertising lease and sale notices.....	1,500	1,500
Total.....	\$19,300	\$19,300

Sixth—Office of superintendent of public instruction—

For salary of deputy and stenographer.....	\$ 3,600	\$ 3,600
For stationery, blanks, expense of examining board and office supplies.....	3,500	3,500
For traveling expenses.....	1,500	1,500
	\$ 8,600	\$ 8,600

Seventh—Attorney general's office.

For salary of assistant.....	\$ 1,500	\$ 1,500
For clerk hire, stenographer, special assistance, ex- pense, stationery, office supplies and incidentals..	7,900	7,900
Total.. ..	\$ 9,400	\$ 9,400

Eighth—Supreme court.

For salary of marshal and librarian.....	\$ 1,200	\$ 1,200
For salary three stenographers at \$600 per year	1,800	1,800
For stationery, blank books and incidentals.....	700	700
For law books.....	800	800
For expenses disbarment proceedings.....	250	250
For salary and expense of reporter.....	1,000	1,000
For salary of clerk.....	1,800	1,800
For salary of Deputy.....	600	600
Total.....	\$ 8,150	\$ 8,150

Ninth—Circuit judges.

For expense nine judges at \$500 each.....	\$ 4,500	\$ 4,500
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§ 4. Maintenance of State House.

For maintenance, fuel, lights, janitor work, repairs and insurance	\$ 5,000	\$ 5,000
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§ 5. Public Examiner's Office.

	1907	1908
For salary of public examiner.....	\$ 1,800	\$ 1,800
For salary of two deputies.....	\$ 3,000	\$ 3,000
For clerk hire.....	\$ 900	\$ 900
For expense.....	\$ 3,000	\$ 3,000
For railroad fare.....	\$ 900	\$ 900
Total.....	\$ 9,600	\$ 9,600

§ 6. Food and Dairy Commissioner's Office.

For salary of food and dairy commissioner.....	\$ 1,600	\$ 1,600
For salary of deputy.....	1,000	1,000
For salary of stenographer.....	600	600
For expense chemical department.....	1,500	1,500
For printing, office supplies and postage.....	900	900
For traveling expenses commissioner and assistants..	1,500	1,500
For railroad mileage.....	500	500
For expenses two representatives to the National Dairy Association and other traveling expenses.....	300	300
Total.....	\$ 7,900	\$ 7,900

§ 7. Mine Inspector's office.

For salary of mine inspector.....	1,600	1,600
For expense	750	750
	\$ 2,350	\$ 2,350

§ 8. State Veterinary Surgeon's Office.

For salary state veterinary surgeon.....	\$ 1,500	\$ 1,500
For expenses and mileage.....	800	800
Total.....	\$ 2,300	\$ 2,300

§ 9. South Dakota National Guard.

For salary of adjutant general.....	\$ 1,500	\$ 1,500
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§ 10. Insurance Commissioner's Office.

For salary insurance commissioner.....	\$ 1,200	\$ 1,200
For clerk hire and stenographer.....	1,900	1,900
For stationery, office supplies and fixtures.....	1,480	1,070
Total.....	\$ 4,580	\$ 4,170

§ 11. Board of Charities and Corrections.

	1907	1908
For salaries for three members.....	\$ 4,500	\$ 4,500
For expenses for members of the board.....	1,500	1,500
For expenses of secretary of the board.....	1,000	1,000
For salary of secretary of the board.....	1,000	1,000
Total.....	\$ 8,000	\$ 8,000

§ 12. State Board of Health.

For per diem and expenses.....	\$ 600	\$ 600
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§ 13. State Board of Pharmacy.

For stationery, supplies and printing.....	\$ 300	\$ 300
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§ 14. State Board of Regents.

For salary of regents.....	\$ 5,000	\$ 5,000
For expense of regents.....	1,500	1,500
For railway mileage.....	1,000	1,000
For salary and expenses of secretary and stenographer	1,500	1,500
For office expenses, postage and stationery.....	250	250
	\$ 9,250	\$ 9,250

§ 15. State Board of Agriculture.

For per diem, mileage and expense.....	\$ 750	\$ 750
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§ 16. State Board of Medical Examiners.

For salary of secretary.....	\$ 800	\$ 800
For salary, per diem, mileage and expense of members	1,250	1,250
Total.....	\$ 2,050	\$ 2,050

§ 17. State Board of Railroad Commissioners.

For salary of commissioners.....	\$ 4,500	\$ 4,500
For salary of secretary.....	1,500	1,500
For expenses of commissioners and secretary.....	1,500	1,500
For clerical expenses, stationery and incidentals....	1,500	1,500
For getting out official state map.....	500	500
For employment of experts and assistants and for expense in determining the value of railroad property in this state, as provided by house bill number 240	\$10,000	
For salary and expense of scale inspector.....	1,500	1,500
Total.....	\$21,000	\$10,500

§ 18. State Historical Society.

	1907	1908
For salary of secretary.....	\$ 1,400	\$ 1,400
For stenographer and three clerks.....	2,520	2,520
For incidental expenses in historical and statistical re- search, library, museum and office supplies....	1,500	1,500
For copying constitutional debates.....	200	
	<u>\$ 5,620</u>	<u>\$ 5,420</u>

§ 19. United States Land Office Fees.

For payment of U. S. land office fees for lists of tax- able lands	\$ 375	\$ 375
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§ 20. Burial of Soldiers and Sailors.

For burial of soldiers and sailors.....	\$ 2,500	\$ 2,500
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§ 21. Conveyance of Convicts.

For conveyance of convicts to the penitentiary...	\$ 5,000	\$ 5,000
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§ 22. School for Blind.

For salaries officers and employees.....	\$ 4,000	\$ 4,000
For maintenance	\$ 5,000	\$ 5,000
	<u>\$ 9,000</u>	<u>\$ 9,000</u>

§ 23. Reform School.

For salaries officers and employes.....	\$ 7,000	\$ 7,200
For maintenance	\$18,500	\$19,000
	<u>\$25,500</u>	<u>\$26,200</u>

§ 24. School for Deaf Mutes.

For salaries officers and employes.....	\$ 6,000	\$ 6,000
For maintenance	\$11,000	\$11,000
	<u>\$17,000</u>	<u>\$17,000</u>

§ 25. Northern Hospital for Insane.

For salaries officers and employes.....	\$10,800	\$11,700
For maintenance	\$24,000	\$28,000
For improvements and repairs.....	\$ 3,000	\$ 1,500
	<u>\$37,800</u>	<u>\$41,200</u>

 § 26. South Dakota Penitentiary.

	1907	1908
For salaries officers and employes.....	\$20,000	\$20,000
For maintenance	\$30,000	\$30,000
For stone quarry and cutting stone.....	\$ 2,000	\$ 2,000
	<hr/>	<hr/>
	\$52,000	\$52,000

§ 27. Hospital for Insane.

For salaries officers and employes.....	\$48,000	\$50,000
For maintenance	\$90,000	\$95,000
For improvements and repairs.....	\$ 8,000	\$ 5,000
	<hr/>	<hr/>
	\$146,000	\$150,000

§ 28. Soldiers' Home.

For salaries officers and employes.....	\$15,000	\$15,000
For maintenance	\$40,000	\$40,000
For expenses and per diem of commissioners.....	\$ 1,800	\$ 1,800
	<hr/>	<hr/>
	\$56,800	\$56,800

§ 29. South Dakota University.

For salaries president and teachers.....	\$45,000	\$45,000
For engineering	\$ 5,000	\$ 5,000
For maintenance	\$15,000	\$15,000
For general and law libraries.....	\$ 2,500	\$ 2,500
For repairing and completing upper story of east hall.	\$ 7,500	
For general laboratory, biology, geology and museum	\$ 2,000	\$ 2,000
For repairing and completing sewerage and connections, and gas plant for laboratory.....	\$ 3,500	
	<hr/>	<hr/>
	\$80,500	\$69,500

§ 30. Agricultural College.

For salaries president and teachers.....	\$17,000	\$17,000
For maintenance	20,000	20,000
For purchase of stock and farm expense.....	3,000	3,000
For Highmore substation	2,000	2,000
For library	1,000	1,000
	<hr/>	<hr/>
	\$43,000	\$43,000

§ 31. School of Mines.

	1907	1908
For salaries president and teachers.....	\$18,000	\$18,000
For maintenance	10,000	10,000
For library	1,000	1,000
For improvement on grounds.....	1,000	
For field exploration.....	1,000	1,000
	<u>\$31,000</u>	<u>\$30,000</u>

§ 32. Madison Normal School.

For salaries president and teachers.....	\$18,000	\$18,000
For maintenance	10,000	10,000
For repairs on buildings and grounds.....	1,000	
	<u>\$29,000</u>	<u>\$28,000</u>

§ 33. Spearfish Normal School.

For salaries president and teachers.....	\$18,000	\$18,000
For maintenance	8,000	8,000
	<u>\$26,000</u>	<u>\$26,000</u>

§ 34. Springfield Normal School.

For salaries president and teachers.....	\$12,000	\$12,000
For maintenance	5,000	5,000
	<u>\$17,000</u>	<u>\$17,000</u>

§ 35. Northern Normal and Industrial School.

For salaries president and teachers.....	\$18,000	\$18,000
For maintenance and repairs.....	7,500	7,500
For library	1,000	1,000
For improvement on grounds and walks.....	800	800
	<u>\$27,300</u>	<u>\$27,300</u>

§ 36. Insurance on public buildings, erected and in course of erection, and twine plant material to be expended under the direction of the board of charities and corrections.....\$ 8,000 \$ 4,000

§ 37. For insurance on public buildings, erected and in course of erection, to be expended under direction of board of regents.....\$ 7,500 600

	1907	1908
§ 38. For insurance on public buildings, erected and in course of erection, to be expended under the direction of the commissioners of the Soldiers' Home	1,500	
§ 39. Woman's Committee of Investigation.		
For per diem, mileage and expenses.....	\$ 500	\$ 500
§ 40. For Geological Survey, to be expended under the direction of the board of regents.....	\$ 1,000	\$ 1,000
§ 41. State Engineer's Office.		
For salary of state engineer.....	\$ 2,000	\$ 2,000
For salary of assistant.....	\$ 1,500	\$ 1,500
For salary and expenses of water commissioners, field assistants and clerk.....	2,900	2,900
For instruments, office supplies and all other expenses	\$ 2,600	\$ 2,600
Total.....	\$ 9,000	\$ 9,000

§ 42. For holding, conducting and paying the expenses of farmers' institutes as provided in chapter 110, Session Laws 1905 in addition to the annual appropriation of \$5,000 provided by that act, the further sum, \$2,000 for each of the fiscal years 1907 and 1908.

§ 43. For salary of member of telephone commission appointed by the governor, \$1,500 each year.

§ 44. Duty of the State Auditor] All amounts herein appropriated shall be used for the specific purposes herein mentioned, and no other, and the state auditor shall issue his warrants on certified, itemized vouchers and proofs filed in his office, except that all items of appropriations for salaries and compensation for state and judicial officers, deputies, clerks and employes thereof shall be payable in equal monthly installments, on certified vouchers being filed in the office by the person or department entitled to the same.

§ 45. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed, and the state auditor shall issue no warrants in excess of the appropriation made herewith, or to state institutions, state officers or boards, whether appointed or elected, except as provided by the provisions of this act or may hereafter be provided by law.

Approved March 11, 1907.

CHAPTER 15

(H. B. 274)

APPROPRIATION FOR PUBLIC PRINTING AND EXPENSES OF DISTRIBUTION

AN ACT to appropriate Money for Printing and Binding Reports of State Officers and Boards for the Fiscal Years of 1905, 1906 and 1907, Printing and Binding Daily and Permanent House and Senate Journals, House and Senate Bills for the Tenth Legislative Assembly of the State of South Dakota, Printing and Binding Governor's Inaugural Address and Message, Legislative Manuals, Hand Books, Session Laws, Public Documents, Advertising for Bids for Public Printing and Such Other Printing as May be Ordered by the Tenth Legislative Assembly of the State of South Dakota and Expenses of Distributing Such Documents, Supreme Court Reports, Legislative Manuals, Hand Books, Journals and Session Laws.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state of South Dakota the sum of thirty-seven thousand (\$37,000) dollars, or so much thereof as may be necessary, for the purpose of printing and binding the reports of state officers and boards for the fiscal years of 1905, 1906, and 1907, printing and binding daily and permanent house and senate journals, house and senate bills of the tenth legislative assembly of the state of South Dakota, printing and binding governor's inaugural address and message, legislative manuals, hand books, session laws, public documents, advertising for bids for public printing, and for such other printing as may be ordered by the tenth legislative assembly of the state of South Dakota.

§ 2. Appropriation] There is also appropriated out of the general fund of the state of South Dakota, for the fiscal years of 1907 and 1908 the sum of nine hundred fifty (\$950) dollars, for the expenses of distributing public documents, supreme court reports, legislative manuals, hand books, journals and session laws, and for such other publications ordered by the tenth legislative assembly of the state of South Dakota.

§ 3. Duty of State Auditor] The state auditor shall draw warrants to pay such expenditures as may be certified to be correct by the secretary of state due on any contract with this state for any printing or binding herein enumerated, and for any necessary expense incurred in the distribution of public documents, supreme court reports, legislative manuals, hand books, journals and session laws and for such other publications ordered by the tenth session of the legislature of the state of South Dakota to be distributed.

§ 4. Emergency] Whereas, an emergency exists, this act shall be in force and effect from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 16

(S. B. 56)

APPROPRIATING MONEY FOR PER DIEM, ETC.

AN ACT Entitled an Act Appropriating Money for the Per Diem and Mileage and Salaries of the President and Members of the Senate and House of Representatives of the Tenth Legislature of the State of South Dakota, and for the Per Diem and Mileage of the Retiring Secretary of the Senate and Chief Clerk of the House of Representatives, and for the Per Diem of the Officers and sub-Employes of Both Branches of the Legislature.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state the following sums of money for the purpose of paying the mileage of the lieutenant governor for opening session and of the president and the members of the senate and the members of the house of representatives of the tenth legislature of the state of South Dakota, and for the per diem and mileage of the retiring chief clerk of the house of representatives, to-wit:

For mileage of lieutenant governor.....	\$ 51.60
For mileage president of senate.....	11.40
For mileage members of senate.....	1,283.25
For mileage members of house.....	2,667.60
To H. C. Dunham for mileage and per diem opening session of house, 1907	32.30
To L. M. Simons opening session of senate.....	25.00
Per diem of J. E. McDougal, lieutenant governor, in open- ing session	10.00
Per diem of members of senate.....	13,500.00
Per diem of the lieutenant governor.....	600.00
Per diem of officers and employes of senate.....	9,500.00
Per diem of members of house.....	26,700.00
Per diem of officers and employes of house.....	10,500.00
Secretary of the senate, indexing, comparing, correcting and writing the journal of the senate in permanent form and furnishing same to the printer.....	900.00
Chief clerk of the house of representatives, indexing, com- paring and writing the journal of the house in perma- nent form and furnishing the same to the printer.....	900.00

§ 2. Emergency] An emergency is hereby declared to exist, and this act shall be in force and effect on and after its passage and approval.

Approved January 22, 1907.

CHAPTER 17

(S. B. 169)

APPROPRIATION FOR J. E. McDOUGAL

AN ACT Appropriating Money to Pay the Per Diem and Mileage of J. E. McDougal as Member of State Canvassing Board for the General Election of the Year 1906.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of sixty-one and 60-100 dollars (\$61.60), which shall be in payment of the per diem and mileage of J. E. McDougal, retiring president of the senate, as member of state canvassing board of the general election held in the year 1906.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall be in effect from and after its passage and approval.
Approved March 6, 1907.

CHAPTER 18

(S. B. 158)

APPROPRIATION TO REIMBURSE MEADE COUNTY

AN ACT Entitled an Act to Appropriate Money to Reimburse Meade County for Funds Advanced for the Transportation of Insane Patients to the Hospital for the Insane at Yankton.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state not otherwise appropriated, for the purpose of reimbursing Meade county for funds advanced April 6, 1904, May 2, 1904 and May 9, 1905 for the purpose of defraying the expenses of transporting three insane patients from Sturgis in Meade county, to the hospital for the insane at Yankton, under orders from the county judge of Meade county, the sum of two hundred and five dollars, (\$205.00) and the state auditor is hereby authorized to draw a warrant in favor of Meade county, for said amount.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall be in force and effect, from and after its passage and approval.

Approved March 6, 1907.

CHAPTER 19

(S. B. 109)

APPROPRIATION FOR LIGHTING PLANT FOR BLIND SCHOOL AT GARY

AN ACT to Appropriate Money for the Construction of and Equipment of a Lighting Plant at the School for the Blind at Gary, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any monies in the state treasury, not otherwise appropriated, the sum of two thousand dollars (\$2,000) or so much thereof as may be necessary, for the erection, construction and equipment of a lighting plant at the school for the blind at Gary, South Dakota.

§ 2. Board of Charities and Corrections to Have Supervision] The improvements and expenditures of money contemplated by this act shall be under the supervision of the state board of charities and corrections, and the state auditor shall issue warrants on the state treasurer for such improvements upon properly certified vouchers from said board, and upon presentation of said warrants the state treasurer shall pay the same.

Approved March 6, 1907.

CHAPTER 20

(H. B. 225)

APPROPRIATION FOR FOOD AND DAIRY COMMISSIONER

AN ACT Entitled an Act to Appropriate Money to Pay Judgments for Costs Against the Food and Dairy Commissioner of the State of South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated out of the moneys in the state treasury not otherwise appropriated the sum of two hundred and thirteen dollars and ten cents for the payment of the judgments for costs in the circuit and supreme courts in the case of Jewett Brothers & Jewett, plaintiff, vs. E. W. Smail, as food and dairy commissioner of the state of South Dakota, defendant, which said action was brought against the defendant in his representative capacity and which said judgments are now of record in the office of the clerk of the circuit court of Minnehaha county.

§ 2. Duty of State Auditor] It shall be the duty of the state

auditor to draw his warrants on the state treasurer for the amount provided by this act upon receiving a satisfaction of said judgments, duly executed and acknowledged by the record owner and holder thereof, and upon presentation of such warrant the state treasurer shall pay the same.

§ 3. Emergency] An emergency is hereby declared to exist, and this act shall be in force from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 21

(H. B. 77)

APPROPRIATION TO PAY UNITED STATES FILING FEES

AN ACT to Appropriate Money to Pay United States Land Office Filing Fees on Selection of Endowment and Indemnity Lands.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated out of any fund in the state treasury, not otherwise appropriated, the sum of one thousand dollars (\$1000.00) to pay the United States land office filing fees on selections of land granted by congress to the state of South Dakota for endowment purposes, and on selections of indemnity land in lieu of losses of common school lands arising from Indian allotments and other causes.

§ 2. Duty of Auditor and Treasurer] That the state auditor is hereby authorized and directed to issue warrants upon the above appropriation upon itemized statements approved by the commissioner of school and public lands, and the state treasurer is authorized to pay the same.

§ 3. Emergency] An emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 22

(H. B. 94)

APPROPRIATION FOR MAINTENANCE OF STATE HOUSE

AN ACT to Appropriate Money for Deficiency in the Maintenance Fund of the State House.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state not otherwise appropriated the sum of nine hundred and fifty dollars to maintain the state house for the period ending June 30, 1907, the same to be disbursed on warrants thereon to be drawn by the state auditor, on properly certified vouchers of the secretary of state.

§ 2. Emergency] Whereas the appropriation for the maintenance fund of the state house made by the legislature of 1905 was insufficient for said purpose for the period ending June 30, 1907, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 23

(S. B. 272)

APPROPRIATING MONEY FOR HORTICULTURAL SOCIETY

AN ACT to Appropriate Money to Pay the Expenses of the State Horticultural Society of the State of South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of seven hundred and fifty (\$750) dollars, for the year 1907 and seven hundred and fifty (\$750) dollars for the year 1908, to pay the expense of the South Dakota Horticultural Society in gathering, compiling and disseminating information concerning fruit culture, tree planting, gardening and other branches of horticulture and the expense of the annual meeting.

§ 2. Duty of Auditor] The state auditor shall draw his warrants on the state treasury for the items of expense provided for herein, upon receiving properly itemized vouchers, certified and signed by the president and secretary of the said society.

§ 3. Repeal] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 7, 1907.

CHAPTER 24

(H. B. 86)

APPROPRIATION TO PAY CERTAIN CITIES THEIR PORTION OF THE INSURANCE TAX FOR FIRE DEPARTMENTS WHICH THEY FAILED TO RECEIVE IN 1904

AN ACT Entitled an Act to Appropriate Money to Pay Certain Cities and Towns Their Portion of the Insurance Tax for Fire Departments Which They Failed to Receive in 1904.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of two thousand one hundred and five and 1-100 (\$2,105.01) dollars, to pay to certain cities and towns the portion of the insurance tax for fire departments which they failed to receive in 1904, by reason of the failure of their respective city clerks or auditors to report, as provided in section 1526 of the Revised Political Code of 1903, as follows:

Bridgewater	\$ 19.96
Bowdle	50.93
Coleman	17.34
Deadwood	908.24
Egan	12.98
Eureka	64.24
Howard	58.97
Huron	316.86
Hurley	32.27
Madison	153.31
Mellette	44.17
Mt. Vernon	38.14
Springfield	32.21
Summit	28.17
Tripp	44.76
Tyndall	57.72
Valley Springs	4.75
Volga	22.67
Vermillion	114.98
White Rock	46.35
Woonsocket	35.99

§ 2. Duty of Auditor] The state auditor shall issue warrants to the proper authorities of the cities and towns named in section 1 of this act, for the sums therein appropriated, upon receipt of properly certified vouchers, and the state treasurer shall pay the same.

§ 3. Emergency] An emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 25

(S. B. 275)

APPROPRIATING CERTAIN FUNDS TO THE SOUTH DAKOTA AGRICULTURAL COLLEGE

AN ACT Appropriating Certain Funds to the South Dakota Agricultural College for Certain Purposes.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] The unappropriated balance of all moneys paid into the state treasury under the provisions of section 5, chapter 68 of the laws of 1897, now section 3128 of the Revised Political Code relating to fees for the inspection of oils, amounting to two thousand dollars and twenty-one cents, as the two and one-half cent fee for each fifty gallons of oils inspected under the provisions of said section 5, are hereby appropriated to the South Dakota Agricultural College, to be used only for purchasing apparatus for its chemical laboratory.

§ 2. Moneys—How Paid] Said moneys shall be paid out by the state treasurer upon the warrant of the state auditor with the approval of the regents of education.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 26

(S. B. 51)

APPROPRIATING MONEY FOR A LADIES' DORMITORY AT THE STATE COLLEGE OF AGRICULTURE AND MECHANIC ARTS AT BROOKINGS

AN ACT to appropriate Money to Erect and Furnish a Building to be Known as the Ladies' Dormitory for the State College of Agriculture and Mechanic Arts at Brookings.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of \$50,000.00 for the erection and furnishing of a ladies dormitory upon the grounds of the State College of Agriculture and Mechanic Arts at Brookings. Provided that \$25,000.00 of the above amount shall be available and used during the fiscal year ending June 30th, 1908, and \$25,000.00 during the fiscal year ending June 30th 1909.

§ 2. Regents to Have Supervision] The erection and furnishing of said ladies dormitory shall be under the control and management of the regents of education and shall be allotted by contract after duly advertising for bids.

§ 3. Duty of State Auditor] The state auditor shall issue warrants upon the state treasurer in payment for the erection and furnishing of said building upon properly certified and itemized vouchers from said board of regents, and upon the presentation of such warrants the state treasurer shall pay the same.

§ 4. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 27

(S. B. 174)

APPROPRIATION FOR SOUTH DAKOTA NATIONAL GUARD

AN ACT to appropriate Money for the Maintenance of the South Dakota National Guard.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the main-

tenance of the South Dakota National Guard, from the first day of May, 1907, until the thirtieth day of April, 1908, twelve thousand (\$12,000) dollars, and for the year commencing the first day of May, 1908, and ending the thirtieth day of April, 1909, the sum of fifteen thousand (\$15,000) dollars.

§ 2. Emergency] Whereas an emergency is hereby declared to exist, this act shall be in force and effect from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 28

(S. B. 141)

APPROPRIATION FOR IMPROVEMENTS AT THE STATE NORMAL SCHOOL AT MADISON

AN ACT Entitled an Act to Appropriate Money for Improvements at the State Normal School, at Madison, S. D.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation for Smoke Stack] That there is hereby appropriated out of moneys in the state treasury not otherwise appropriated, the sum of twenty-five hundred (\$2,500.00) dollars or so much thereof as may be necessary for the erection of a brick or concrete smoke stack for the power house of said Madison State Normal School.

§ 2. Appropriation for Sewerage] That there is hereby appropriated out of moneys in the state treasury not otherwise appropriated, the sum of three thousand five hundred (\$3,500.00) dollars or so much thereof as may be necessary for the construction of a sewerage system for said Madison State Normal School buildings.

§ 3. Appropriation for Enlarging Girls' Dormitory] That there is hereby appropriated out of moneys in the state treasury not otherwise appropriated the sum of twelve thousand (\$12,000.00) dollars or so much thereof as may be necessary for the enlargement of east hall (girls' dormitory) on the campus of the Madison State Normal School and for furnishing the same.

§ 4. Contract and Construction] That the construction of all improvements provided for in this act, shall be under the control and management of the regents of education of the state of South Dakota and shall be erected and constructed on the campus of the State Normal School at Madison, South Dakota by contract in such case after duly advertising for bids and shall be completed as speedily as possible.

§ 5. Duty of State Auditor] It shall be the duty of the state auditor to draw his warrant on the state treasurer for the several amounts provided in this act, upon receiving properly certified and itemized vouchers from said board of regents of education and upon presentation of such warrants the state treasurer shall pay the same.

§ 6. Emergency] Because at least some of the items in this bill are absolutely needed by the opening of the next school year, therefore an emergency is hereby declared to exist and this act shall be in force from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 29

(H. B. 115)

APPROPRIATION FOR SEWERAGE AT REFORM SCHOOL

AN ACT Entitled an Act for an Appropriation for Putting in a System of Sewerage for the State Reform School.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated of the general fund of the state not otherwise appropriated, the sum of three thousand (\$3,000.00) dollars, for a system of sewerage for the state Reform School.

§ 2. Under Supervision of Board of Charities and Corrections] The building and construction of said sewer shall be under the supervision and control of the state board of charities and corrections.

§ 3. Duty of Auditor] The state auditor shall issue warrants upon the sum appropriated upon properly certified vouchers from the state board of charities and corrections and the state treasurer shall pay the same.

§ 4. Emergency] Whereas there being no funds for the payment available for such system, an emergency is hereby declared to exist, and this act shall take effect from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 30

(H. B. 303)

APPROPRIATION FOR INVESTIGATING COMMITTEE ON STATE FAIR GROUNDS

AN ACT Appropriating Money for Fare and Other Expenses of the Investigating Committee on State Fair Grounds.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state not otherwise appropriated the sum of thirty-eight and 56-100 dollars (\$38.56) to provide for railroad fare and other expenses for visiting state fair grounds, by the joint committee appointed for that purpose.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall be in force from and after its passage and approval.
Approved March 9, 1907.

CHAPTER 31

(H. B. 300)

APPROPRIATING MONEY FOR PUBLISHING SUPREME COURT REPORTS

AN ACT Entitled an Act to appropriate Money to Publish Supreme Court Reports.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state treasury the sum of three hundred and eight dollars to publish supreme court reports of the state of South Dakota for the period ending June 30th, 1907.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall be in force and effect after its passage and approval.
Approved March 9, 1907.

CHAPTER 32

(H. B. 109)

AN ACT APPROPRIATING MONEY TO CONSTRUCT AND BUILD ON THE STATE EXPERIMENTAL FARM AT HIGHMORE

AN ACT Appropriating Money to Construct and Build on the State Experimental Farm at Highmore, South Dakota, an Employees' House, a Barn, a Granary, Corn Cribs, Exhibit House, and to Put Down and Equip a Well.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any money in the general funds of the treasury of this state, not otherwise appropriated, the sum of eight thousand dollars (\$8,000.00) or so much thereof as shall be necessary to construct and build on the state experimental farm at Highmore, South Dakota, an employees' house, a barn, a granary, corn cribs, exhibit house, and to put down and equip a well.

§ 2. Constructed Under Supervision of Board of Regents] The said buildings and improvements shall be constructed, erected and instituted under the supervision of the Board of Regents by contracts to be let to the lowest and best responsible bidders as soon as practicable after the passage and approval of this act. The state auditor shall issue warrants upon the state treasurer in payment for said buildings and improvements upon properly certified vouchers, approved by the Board of Regents and upon presentation of said warrants the said treasurer shall pay the same.

§ 3. Emergency] Whereas, the above buildings and improvements are badly needed and the work should begin as early as possible, an emergency is hereby declared to exist and this act shall be in force and take effect from and after its passage and approval.

Approved March 11, 1907.

CHAPTER 33

(S. B. 112)

RELATING TO THE LIVE STOCK PAVILION AT MITCHELL

AN ACT to appropriate Money to Pay Insurance on Live Stock Pavilion Located at Mitchell, South Dakota, from December, 1905, to December, 1907.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the money in the state treasury, not otherwise appropriated, the sum of two hundred and eighteen dollars and forty cents, (\$218.40) to pay insurance on the live stock pavilion at Mitchell from December 1905 to December 1907.

§ 2. Duty of State Auditor] It shall be the duty of the state auditor to issue warrant on the state treasurer for the amount provided in this act upon the presentation of properly itemized and certified vouchers for the same by the said officers of said association.

§ 3. Emergency] An emergency is hereby declared to exist and this act shall be in effect on and after its passage and approval.

Approved March 9, 1907.

CHAPTER 34

(S. B. 116)

APPROPRIATION FOR BUILDINGS AT THE INSANE HOSPITAL AT YANKTON

AN ACT to appropriate Money for the Completion of the Infirmary Building for Women, Equipping and Furnishing the Same, for Extension of Laundry Building; for Construction of a Green House and for a Cottage for Disturbed Men Patients at the Hospital for the Insane at Yankton, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation for Completing Infirmary Building for Women] There is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated the sum of twenty thousand (\$20,000) dollars or so much thereof as may be necessary for the completion of an infirmary building for women at the hospital for the insane at Yankton, South Dakota; and the sum of five thousand (\$5,000) dollars for equipping and furnishing said building.

§ 2. Appropriation for Extension of Laundry Building] There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of four thousand (\$4,000) dollars or as much thereof as may be necessary for making an extension of the laundry building and equipping the same at the hospital for the insane at Yankton, South Dakota.

§ 3. Appropriation for a Green House] There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of two thousand five hundred (\$2,500) dollars or so much thereof as may be necessary for the construction and erection of a green house at the hospital for the insane at Yankton, South Dakota.

§ 4. Appropriation for Cottage for Disturbed Men Patients] There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of fifteen thousand (\$15,000) dollars or so much thereof as may be necessary for the commencement of a building during the year 1908 for disturbed men patients at the hospital for the insane at Yankton, South Dakota.

§ 5. Board of Charities and Corrections to Have Supervision] All of the improvements and expenditures of moneys provided for in the foregoing sections shall be under the supervision of the board of charities and corrections and the state auditor shall issue warrants on the state treasury in payment for such buildings and improvements upon properly itemized and certified vouchers from the said board and upon presentation of said warrants, the state treasurer shall pay the same.

Approved March 9, 1907.

CHAPTER 35

(S. B. 97)

APPROPRIATING MONEY FOR INVESTIGATING COMMITTEE

AN ACT for the Appropriation of Money to Defray the Expenses Incurred Under House Joint Resolution No. 9.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That to comply with the provisions of house joint resolution No. 9 there is hereby appropriated out of any moneys in the treasury, not otherwise appropriated the sum of one hundred (\$100) dollars, or as much thereof as may be necessary to defray the actual travelling and other necessary expenses of the persons engaged in such investigation, and the state auditor is hereby authorized and directed to issue his warrants against such appropriation in the usual manner.

§ 2. Emergency] An emergency is hereby declared to exist, and this act shall take effect, from and after its passage.

Approved March 9, 1907.

CHAPTER 36

(S. B. 167)

APPROPRIATION FOR THE SOLDIERS' HOME

AN ACT to appropriate Money to Repair and Improve the South Dakota Soldiers' Home at Hot Springs, South Dakota, to Construct a Hospital Building, to Build and Equip a Bakery, to Enlarge the Quartermaster's Store Building, to Build Six New Cottages, to Put in a Reservoir, Pipes and Hydrant, for Furnishing Storm Windows, and the Improvement of the Grounds, Roads and Walks at the Said Soldiers' Home at Hot Springs, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the

moneys in the general fund of the treasury of the state of South Dakota, not otherwise appropriated, the sum of forty thousand (\$40,000) dollars, or so much thereof as shall be necessary to repair and improve the Soldiers' Home at Hot Springs, South Dakota, by painting the buildings of said home, by completing the flooring of the main building, by putting a new roof on the hospital building, by putting in a water reservoir, pipes and hydrants, by the construction of a new hospital building, by building and equipping a bakery, by enlarging the quartermaster's store building, by the construction of six new cottages, by the improvement of grounds, roads, and walks and the furnishing of storm windows for the main building.

§ 2. Board of Commissioners to Have Supervision] Such repairs and improvements shall be made under the supervision of the board of commissioners of said home, by contract to be let to the lowest and best responsible bidders, as soon as practicable after the passage and approval of this act. And that the state auditor shall issue warrants upon the state treasurer in payment of said repairs and improvements, and for said buildings and constructions, upon properly certified vouchers approved by the said board of commissioners and upon the presentation of said warrants to the said state treasurer he shall pay the same.

§ 3. Emergency] Whereas said repairs and improvements and buildings are badly needed, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 12, 1907.

CHAPTER 37

(S. B. 180)

APPROPRIATION TO PURCHASE LAND FOR THE NORTHERN HOSPITAL FOR INSANE AT REDFIELD

AN ACT to appropriate Money to Purchase Additional Lands Contiguous and Adjoining the Grounds of the Northern Hospital for the Insane at Redfield.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That the state board of charities and corrections are hereby authorized to purchase such land as they may deem necessary as hereinafter provided.

§ 2. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of \$9,600.00 or so much thereof as may be necessary, to purchase additional land contiguous

to and adjoining the present site and grounds of the Northern Hospital for the Insane at Redfield, described as follows, to-wit: Lots 3 and 4 of the NW¼ of section 3, township 116, range 64 containing one hundred and sixty-one acres, more or less, \$6,400.00; and the 80 acres contracted for by the state board of charities and corrections, at \$3,200.00; said lands to be used exclusively for the benefit of said institution.

§ 3. That the title to such premises as may be so purchased shall be conveyed in fee simple to the state of South Dakota by warranty deed, free and clear of all incumbrances, for the purposes and uses above mentioned.

§ 4. The state auditor, upon the delivery of deed or deeds covering such grounds or premises purchased as aforesaid, together with abstract of titles to such lands or premises, showing the title to such lands and premises to be good and free from all incumbrances, is hereby authorized and directed to draw a warrant on the state treasurer in such sum or sums, not exceeding the above amount hereby appropriated, in payment of the purchase price of such additional lands and premises.

Approved March 12, 1907.

CHAPTER 38

(S. B. 290)

APPROPRIATING MONEY FOR STATE FAIR AT HURON

AN ACT to appropriate Money for the State Fair at Huron, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated from the general fund from the treasury of South Dakota, not otherwise appropriated, the sum of three thousand dollars for the year 1907 and three thousand dollars for the year 1908 for the purpose of paying premiums awarded at and expenses of said fair for the said years.

The state auditor is hereby directed to issue his warrants therefor upon properly itemized vouchers and signed by the president and secretary of the board of agriculture. Provided, that this appropriation is made and shall remain upon the express condition that no intoxicating liquors shall be sold upon and no gambling shall be permitted upon the fair grounds during the continuance of the fair.

Approved March 9, 1907.

CHAPTER 39

(S. B. 21)

APPROPRIATION FOR BUILDINGS ON STATE FAIR GROUNDS

AN ACT to appropriate Money to Construct, Erect and Institute on the State Fair Grounds at Huron, South Dakota, Cattle and Horse Barns, a Swine Building and a Sheep Building, a Dairy Building and for the Improvement of the Ground and the Construction of Walks on the Said State Fair Grounds.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any money in the general funds of the treasury not otherwise appropriated the sum of \$35,000 or so much thereof as may be necessary to build buildings for the exhibition of cattle, horses, sheep, swine, poultry and dairy products, and for the improvement of said state fair grounds and the construction of walks thereon. Provided, that of the above named amounts \$20,000 shall be available and used during the fiscal year ending June 30 1908 and \$15,000 shall be available and used during the fiscal year ending June 30th 1909.

§ 2. State Board of Agriculture to Have Supervision] The said buildings and improvements shall be constructed, erected and instituted under the supervision of the state board of agriculture by contracts to be let to the lowest and best responsible bidder as soon as practicable after the passage and approval of this act. The state auditor shall issue warrants upon the state treasurer in payment for said buildings and improvements upon properly certified vouchers, approved by the said state board of agriculture and upon presentation of said warrants the said treasurer shall pay the same.

§ 3. Emergency] Whereas, the above buildings and improvements are badly needed and the work should begin as early as possible, an emergency is hereby declared to exist and this act shall be in force and take effect from and after its passage and approval.

Approved March 9, 1907.

CHAPTER 40

(H. B. 85)

APPROPRIATION FOR BUILDING ON SITE OF SOUTH DAKOTA IMPROVED LIVE STOCK AND POULTRY BREEDERS' ASSOCIATION

AN ACT Entitled an Act to Appropriate Money for the Purpose of Erecting an Addition to the Building on the Site of the South Dakota Improved Live Stock and Poultry Breeders' Association.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of two thousand dollars, (\$2,000) to pay the expenses of erecting and equipping an addition to the building to the one now located at Mitchell, Davison county, South Dakota, which is too limited and inadequate to meet the demand of said association.

§ 2. Appointment of Commission] That a commission consisting of Albert Hill of Hanson county, I. W. Seaman of Davison county, C. C. Sippel of Faulk county, is hereby appointed and constituted for the purpose of expending the sum herein appropriated in designing, erecting and equipping said building. Provided, that in case a vacancy occurs in said commission, by resignation or death of any members of said commission, the vacancy shall be filled by appointment by the governor of this state, the person or persons so appointed by the governor to be first nominated by the remaining members of said commission. Provided, that a majority of the members of said commission shall have the power to transact the business of the said commission. Provided, further, that said commission shall receive no compensation for services rendered under this act, except actual expenses of said commission.

§ 3. Completion of Addition] That said addition shall be completed and equipped on or before January 1st, 1908, and that said addition shall be used for the exclusive use and benefit and under the management of said association. Provided, that the state shall not be liable for any expenses in maintaining and managing said addition after the same is erected and equipped.

§ 4. Duties of Auditor and Treasurer] The state auditor shall issue warrants for the payment of the expenses incurred by said commission in erecting and equipping of said addition on certified itemized vouchers by said commission and the state treasurer shall pay the same.

Approved March 9, 1907.

CHAPTER 41

(S. B. 144)

APPROPRIATION FOR ADDITIONAL BUILDINGS FOR THE NORTHERN
NORMAL AND INDUSTRIAL SCHOOL

AN ACT to Appropriate Money for the Construction, Equipment and Furnishing of an Additional School Building for the Use of the Northern Normal and Industrial School.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of sixty thousand dollars, or so much thereof as may be necessary, for the construction, equipment and furnishing of a school building upon the grounds of the Northern Normal and Industrial School at Aberdeen: Provided that \$30,000.00 of the above amount shall be available and used during the fiscal year ending June 30th 1908, and \$30,000.00 shall be available and used during the fiscal year ending June 30th 1909.

§ 2. Regents to Have Supervision] Said building shall be erected under the supervision of the board of regents and the state auditor shall issue warrants upon the state treasurer in payment for the construction, equipment and furnishing thereof upon properly certified vouchers from said board, which said vouchers shall be itemized and upon presentation of said warrants the said treasurer shall pay the same.

§ 3. To be Completed—When] Said building shall be erected by contract after receiving bids and shall be completed and ready for occupancy on or before the first day of January, 1908.

§ 4. Emergency] Whereas the attendance of said institution has far exceeded that anticipated, and the accommodations are already inadequate, therefor, an emergency exists and is declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 12, 1907.

CHAPTER 42

(S. B. 179)

APPROPRIATION FOR REFORM SCHOOL

AN ACT Entitled an Act to Appropriate Money to Pay for Material Furnished at the Reform School.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there be and is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of eight hundred, fifty-nine dollars and forty-nine cents (\$859.49) or so much thereof as the board of charities and corrections may find due the claimant, Louis R. Clark, for material furnished the State Reform School.

§ 2. Duty of Auditor] It shall be the duty of the state auditor to issue warrants upon this fund so appropriated, upon properly certified vouchers which have been approved by the board of charities and corrections.

Approved March 12, 1907.

CHAPTER 43

(S. B. 213)

APPROPRIATION FOR THE SCHOOL OF DEAF MUTES AT SIOUX FALLS

AN ACT Entitled an Act to Appropriate Money for the Erection and Furnishing of an Addition to the Building Used a Girls' Dormitory at the School for Deaf Mutes at Sioux Falls, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of five thousand dollars (\$5,000) or so much thereof as may be necessary for the construction and erection of an addition to the building now used as a girls dormitory at the School for Deaf Mutes at Sioux Falls, South Dakota and for equipping and furnishing the same.

§ 2. Board of Charities and Corrections to Have Supervision] Said improvement shall be made under the supervision of the state board of charities and corrections, and the state auditor shall issue warrants upon the state treasurer in payment for the same upon properly certified vouchers from said board, and upon presentation of said warrants the state treasurer shall pay the same.

§ 3. Emergency] An emergency is hereby declared to exist whereby this act shall be in full force and effect from and after its passage and approval.

Approved March 12, 1907.

CHAPTER 44

(S. B. 44)

APPROPRIATION FOR LAW BUILDING AT VERMILLION

AN ACT to appropriate Money for the Erection and Equipment of a New Building for the College of Law of the University of South Dakota, to be Erected on the Grounds of Said University and Known as the Law Building.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there be, and is hereby appropriated the sum of fifty thousand dollars for the erection and equipment of a new building on the grounds of the University of South Dakota at Vermillion, South Dakota, out of any moneys in the state treasury not otherwise appropriated. Provided, that \$25,000.00 of the above amount shall be available, and used during the fiscal year ending June 30th 1908, and \$25,000.00 during the fiscal year ending June 30th 1909.

§ 2. Building—How Known] Said building shall be known as the Law Building and shall be for the use of the College of Law of the University of South Dakota, and for the purpose of affording class, lecture, and library rooms, and such other rooms as the regents of education shall deem proper and necessary for said college of law, provided, that in the construction of said building said regents of education may, in their discretion provide and equip rooms therein for the temporary or permanent use of some or all of the literary societies of said university, or for other proper and necessary purposes, either temporary or permanent in connection with the work of the university.

§ 3. Erected Under Supervision of Regents of Education—Duty of Auditor] Said building shall be erected and equipped under the supervision of the regents of education, and by contract after receiving bids therefor, all in manner as provided by law, and the state auditor shall issue warrants on the treasurer in payment for the construction and equipping of said building upon properly certified and itemized vouchers of said regents of education, and upon presentation of such warrants the treasurer shall pay the same.

Approved March 12, 1907.

CHAPTER 45

(S. B. 241)

APPROPRIATING MONEY FOR REV. JAMES DAVIES

AN ACT to appropriate Money to Pay Rev. James Davies the Balance Due Him for Conducting Chapel Services at the Reform School at Plankinton, South Dakota, for the Years 1897 and 1898.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state of South Dakota the sum of sixty-nine dollars to pay the Rev. James Davies the balance due him for conducting chapel services at the Reform School at Plankinton, South Dakota, for the years 1897 and 1898.

§ 2. Emergency] Whereas, there are no funds available for the payment of the said expenses, an emergency is hereby declared to exist and this bill shall take effect and be in force from and after its passage and approval.

Approved March 9, 1907.

CHAPTER 46

(S. B. 205)

APPROPRIATION FOR THE STATE SCHOOL OF MINES

AN ACT Entitled "An Act to appropriate Money for the Construction of a Janitor's House and for the Reconstruction of the Metallurgical Laboratory at the State School of Mines, at Rapid City, South Dakota."

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of one thousand five hundred dollars, (\$1,500) or so much thereof as may be necessary, for the construction and erection of a house to be used as a residence for the janitor of the State School of Mines at Rapid City, South Dakota.

§ 2. Appropriation] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of fifteen thousand dollars (\$15,000) or so much thereof as may be necessary for the reconstruction of the Metallurgical Laboratory at the State School of Mines, at Rapid City, South Dakota.

§ 3. Regents to Have Supervision—Duty of Auditor] All of

the expenditures of moneys provided for in the foregoing sections shall be under the supervision of the board of regents of education, and the state auditor shall issue warrants on the state treasurer in payment for such building and improvements, upon properly itemized and certified vouchers from the said board, and upon presentation of said warrants the state treasurer shall pay the same.

Approved March 12, 1907.

CHAPTER 47

(H. B. 140)

APPROPRIATION FOR NORMAL SCHOOL AT SPEARFISH

AN ACT Entitled an Act to Appropriate Money to Complete and Equip Certain Buildings at the State Normal School at Spearfish.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any moneys in the general fund of the state, not otherwise appropriated, for the completion and improvement of certain buildings at the State Normal School at Spearfish, the following sums:

For completing and equipping the main building \$50,000.

For completing attic and basement of the girls' dormitory, \$5,000.

§ 2. Regents of Education to Have Supervision] The completion and improving of said buildings shall be under the control and management of the regents of education and shall be allotted by contract.

§ 3. Duty of State Auditor] The state auditor shall issue warrants upon the sums appropriated upon properly certified vouchers from regents of education and the state treasurer shall pay the same.

Approved March 12, 1907.

CHAPTER 48

(H. B. 42)

DEFICIENCY APPROPRIATION FOR CONVEYANCE OF CONVICTS

AN ACT Appropriating Money to Pay the Deficiencies for Conveyance of Convicts to the Penitentiary.

Be it Enacted by the Legislature of the State of South Dakota:

Whereas, The legislature of 1901 and 1903 failed to appropriate a sufficient amount for the payment of the expense of conveyance of

convicts to the penitentiary for the fiscal years 1904, 1905 and 1906, and,

Whereas, These expenses have been incurred and paid by the various sheriffs of the state as shown by itemized sworn statements and bills on file in the office of the state auditor, but the same cannot be paid for the reason that the appropriations for this purpose are exhausted, therefore,

§ 1. Appropriation] There is hereby appropriated the sum of twenty-five hundred dollars (\$2,500) out of the general fund of the state not otherwise appropriated for the payment of these deficiency claims for the fiscal years 1904, 1905 and 1906, and the state auditor shall draw his warrant for such amounts as he shall find due and unpaid.

§ 2. Emergency] Whereas, There being no funds available for the payment of these claims, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved March 2, 1907.

CHAPTER 49

(S. B. 27)

PROVIDING FOR PAYMENT OF EXPENSES OF CIRCUIT COURT JUDGES

AN ACT to Provide for the Payment of Expenses of Circuit Judges of the State Circuit Courts, and Making Appropriation Therefor.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Expenses of Circuit Court Judges] That each of the judges of the state circuit courts of this state shall be reimbursed his actual expenses for postage and stationery used in the discharge of his duties as such judge, together with his actual expenses for railroad fare and other transportation, as well as for boarding and lodging, incurred by him in journeying in the performance of the duties of his office, or while holding court or chambers outside of the county of his residence, same to be paid to him at the end of each and every month, upon the presentation to the state auditor of a verified itemized statement of the same for such month. Provided, however, that no one of said judges shall be allowed for such expenses in any one year more than the aggregate sum for said year of five hundred dollars.

§ 2. Appropriation] That there is hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of five hundred dollars per year for each of said circuit judges, or so

much thereof as may be necessary for the purpose of paying the expenses herein provided for.

§ 3. Emergency Declared] That there being no statute providing for such expenses, an emergency is hereby declared and this law shall take effect from and after its passage and approval.

Approved February 12, 1907.

CHAPTER 50

(S. B. 28)

DEFICIENCY APPROPRIATION FOR THE PUBLIC EXAMINER

AN ACT Providing for an Appropriation of Money to Pay Deficiency in the Salary of the Public Examiner for the Years 1905 and 1906.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, to pay the deficiency in the salary of the public examiner as fixed in chapter 148 of the Session Laws of 1905, the sum of \$600.00, or so much thereof as shall be necessary and the state auditor is hereby authorized to draw warrants against such appropriation upon the presentation of properly itemized vouchers.

§ 2. Emergency] Whereas an emergency is hereby declared to exist this act shall be in force and effect on and after its passage and approval.

Approved March 6, 1907.

CHAPTER 51

(H. B. 41)

DEFICIENCY APPROPRIATION FOR ATTORNEY GENERAL

AN ACT Appropriating Money to Pay the Deficiency Expense of the Attorney General.

Be it Enacted by the Legislature of the State of South Dakota:

Whereas, the legislature of 1903 failed to appropriate a sufficient amount for the payment of clerk hire and expense of the attorney general for the fiscal year 1904, and,

Whereas, these expenses have been incurred and paid by the at-

torney general as shown by itemized statement on file in the office of the state auditor, but the same cannot be paid for the reason that the appropriation for this purpose is exhausted, therefore,

§ 1. Appropriation] There is hereby appropriated the sum of one hundred and twelve and 24-100 dollars (\$112.24) out of the general fund of the state not otherwise appropriated for the payment of the claim of the attorney general, and the state auditor shall draw his warrant for the above amount.

§ 2. Emergency] Whereas, there being no funds available for the payment of this claim, an emergency is hereby declared to exist, and this act shall take effect from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 52

(H. B. 27)

DEFICIENCY APPROPRIATION FOR THE OFFICE OF STATE ENGINEER

AN ACT to Appropriate Money for Deficiency in the Fund for Salaries and Expenses in the Office of State Engineer.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of seven hundred dollars (\$700) for clerk hire, office supplies, traveling expenses and incidental expenses in the office of state engineer for the period ending June 30, 1907, the same to be disbursed on warrants thereon to be drawn by the state auditor on properly certified vouchers of the state engineer.

§ 2. Emergency] Whereas the appropriation for salaries and expenses of the office of state engineer made by the legislature of 1905 was insufficient for said purpose for the period ending June 30, 1907, an emergency is hereby declared to exist, and this act shall be in force and effect after its passage and approval.

Approved March 1, 1907.

CHAPTER 53

(H. B. 76)

ADDITIONAL APPROPRIATION FOR THE OFFICE OF SECRETARY OF STATE

AN ACT to Appropriate Money for Deficiency in the Fund for Office Expenses in the Office of Secretary of State.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of three hundred (\$300) dollars for incidental expenses in the office of the secretary of state for the period ending June 30, 1907, the same to be disbursed on warrants thereon to be drawn by the state auditor on properly certified vouchers of the secretary of state.

§ 2. Emergency] Whereas, the appropriation for expenses of the office of secretary of state made by the legislature of 1905 was insufficient for said purpose for the period ending June 30, 1907, an emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 54

(H. B. 183)

APPROPRIATION FOR CLERK HIRE IN THE DEPARTMENT OF HISTORY

AN ACT Entitled an Act Appropriating Money for Clerk Hire in the Department of History.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any money in the state treasury general fund, not otherwise appropriated the sum of four hundred eighty dollars for clerk hire in the department of history from March 1, 1907, to July 1, 1907.

§ 2. Money—How Paid] The money so appropriated shall be paid upon the warrant of the state auditor upon vouchers duly certified by the superintendent of census and vital statistics.

§ 3. Emergency] An emergency is hereby declared to exist and this act shall take effect from and after its passage and approval.

§ 4. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 55

(S. B. 107)

DEFICIENCY APPROPRIATION FOR PUBLIC PRINTING

AN ACT to Appropriate Money to Pay Deficiency for the Printing and Binding of Reports of State Officers and State Boards of Control of the State of South Dakota, and Such Other Reports and Documents as Were Required by Law to be Printed by Officers and Employes of Said State Under the Third Class of Printing for the Fiscal Year Commencing July 1, 1905.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of one thousand five hundred seventy-four dollars and sixty-two cents (\$1,574.62), to pay C. J. McLeod for a deficiency for the printing and binding of the reports of officers and state boards of control of the state of South Dakota, and such other reports and documents as were required by law to be printed by officers and employes of said state, under the third class of printing, for the fiscal year commencing July 1, 1905.

§ 2. Duty of Auditor] The state auditor shall issue a warrant upon the state treasurer for the sum of money hereby appropriated upon receipt of proper certified itemized vouchers, approved by the commissioner of public printing, filed in his office, and the state treasurer shall pay the same when presented.

§ 3. Emergency] An emergency is hereby declared to exist, and this law shall take effect and be in force, from and after is passage and approval.

Approved March 7, 1907.

CHAPTER 56

(H. B. 193)

DEFICIENCY APPROPRIATION FOR COMMISSIONERS OF THE SOLDIERS' HOME

AN ACT Appropriating Money to Pay the Per Diem and Expenses of Commissioners of the Soldiers' Home for the Fiscal Year Ending June 30, 1905.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the pur-

pose of paying the per diem and expenses of the commissioners of the Soldiers' Home for the fiscal year ending June 30, 1905, the following amounts, to-wit: J. S. Pratt, eighty-one and 53-100 dollars (\$81.53); estate of C. A. Marshall, sixty-eight and 85-100 dollars (\$68.85).

§ 2. Duty of Auditor] It shall be the duty of the state auditor to issue warrants upon the fund so appropriated, upon proper certified vouchers from the commissioners of the Soldiers' Home and the state treasurer shall pay the same.

§ 3. Emergency] Whereas, the legislature failed to appropriate a sufficient amount to pay the per diem and expenses of the members of the Soldiers' Home board for the fiscal year ending June 30, 1905, an emergency is hereby declared to exist, and this act shall be in effect and force from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 57

(S. B. 152)

DEFICIENCY APPROPRIATION FOR THE SOLDIERS' HOME

AN ACT to appropriate Money for Deficiencies in the Maintenance Fund, in the Salaries of Officers and Employes Fund and in the Commissioners' Fund of the South Dakota Soldiers' Home.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of four thousand dollars (\$4,000.00), or so much thereof as shall be necessary for the maintenance fund of the South Dakota Soldiers' Home, to supply a deficiency in said fund, because of the increased membership of said home during the biennial period ending June 30th, 1907; and the sum of one hundred and seventy-five dollars, (\$175.00) or so much thereof as may be necessary to employ two trained nurses for the hospital for the remaining portion of the year ending June 30th, 1907, to supply a deficiency caused by the inability to hire such nurses at the salaries now paid, and appropriated for.

§2. Emergency] Whereas there is not sufficient money in the maintenance fund, the salaries of officers and employes fund, nor the commissioners fund of said home, for the year ending June 30th, 1907, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1907.

CHAPTER 58

(H. B. 301)

DEFICIENCY APPROPRIATION FOR THE OFFICE OF THE COMMISSIONER OF SCHOOL AND PUBLIC LANDS

AN ACT to Appropriate Money for Deficiency in Fund for Clerk Hire in the Office of Commissioner of School and Public Lands.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of two hundred seventy-two and fifty one-hundredths dollars (\$272.50) for clerk hire, for the period ending June 30, 1907, the same to be disbursed on warrants thereon to be drawn by the state auditor on properly certified vouchers of the commissioner of school and public lands.

§ 2. Emergency] Whereas, the appropriation for salaries of clerks in the office of the commissioner of school and public lands made by the legislature of 1905 was insufficient for said purpose for the period ending June 30, 1907, an emergency is hereby declared to exist, and this act shall be in force and effect after its passage and approval.

Approved March 7, 1907.

CHAPTER 59

(S. B. 159)

DEFICIENCY APPROPRIATION FOR INSANE HOSPITAL AT YANKTON

AN ACT Entitled an Act to Appropriate Money to Pay for Labor and Material Furnished the South Dakota Hospital for the Insane at Yankton, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there be and is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of sixteen hundred sixty-three dollars and eighty-three cents, or as much thereof as the board of charities and corrections may find due the General Electric Company in full settlement of its claim for material and labor furnished the South Dakota Hospital for the Insane in 1899 and 1900.

§ 2. Duty of Auditor] It shall be the duty of the state auditor to issue a warrant for funds so appropriated upon proper certified

vouchers, which have been approved by the board of charities and corrections.

§ 3. Emergency] Whereas, there is no appropriation for this purpose and an emergency exists, this act shall take effect and be in force from and after its passage and approval.

Approved March 12, 1907.

CHAPTER 60

(S. B. 247)

DEFICIENCY APPROPRIATION FOR COMMISSIONER OF INSURANCE

AN ACT Appropriating Funds to Meet a Deficiency in the Appropriation for Incidental Expenses for 1906 in the Office of the Commissioner of Insurance.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of three hundred (\$300) dollars to meet a deficiency and to provide for the incidental expenses of the office of the commissioner of insurance, from February first to July first, 1907.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall be in force and effect from and after its passage and approval.

Approved March 5, 1907.

CHAPTER 61

(S. B. 265)

DEFICIENCY APPROPRIATION FOR PUBLIC EXAMINER

AN ACT Appropriating Money for Traveling Expenses for the Remainder of the Fiscal Year, Ending June 30, 1907, for the Office of Public Examiner.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of three hundred (\$300) dollars to provide for railroad fare of the public examiner and deputies for the remainder of the fiscal year ending June 30th, 1907.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall be in force and effect from and after its passage and approval.

Approved March 5, 1907.

CHAPTER 62

(H. B. 116)

DEFICIENCY APPROPRIATION FOR PUBLISHING PROPOSED CONSTITUTIONAL AMENDMENTS, AND FOR OTHER DEFICIENCIES

AN ACT to appropriate Money for Deficiencies to Pay for Publishing Proposed Constitutional Amendments, and Other Printing, and Preparing the State House and Caring for Same for and During the Tenth Legislative Session, and for Other Deficiencies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That there is hereby appropriated out of the general fund of the state, the following sums of money to pay the deficiencies in printing and publishing the proposed amendments to the constitution, and for other printing, and preparing and caring for the tenth legislative session and for other deficiencies.

For publishing proposed amendments to the constitution:

The Egan Express.....	\$34.10
White Lake Wave.....	34.10
Republic-Courier	34.10
Campbell County Progress.....	34.10
Edgemont Express	34.10
Iroquois Chief	34.10
Marshall County Journal.....	34.10
Lead Daily Call.....	34.10
Press & Dakotan.....	34.10
Clear Lake Courier.....	31.50
Sturgis Record	31.50
Fairfax Sun-Review	31.50
Spirit of Dakota.....	31.50
Lyman County Argus-Leader.....	31.50
Sisseton News	31.50
Fairplay	31.50
Keystone Recorder	31.50
Redfield Press	40.85
Reporter & Farmer.....	40.85
Rapid City Daily Journal.....	40.85
Jerauld Co. Review.....	40.85

Hyde County Bulletin.....	40.85
Scotland Journal	40.85
Dakota Farmers Leader.....	40.85
Watertown Herald	40.85
Plaindealer (Whitewood)	40.85
Belle Fourche Bee.....	48.15
Alexandria Herald	48.15
Custer Chronicle	48.15
Journal World	48.15
Pierre Weekly Free Press (Assigned to H. R. Tarbell).....	48.15
Olivet Leader	48.15
Brookings Weekly Register.....	48.15
Aberdeen Weekly News.....	48.15
Bridgewater Tribune	48.15
For advertising for bids for printing supreme court reports:	
Weekly Capital Journal	16.25
Yankton Press and Dakotan.....	16.25
Rapid City Daily Journal.....	16.25
Aberdeen Weekly News.....	16.25
For advertising for bids for public printing:	
Yankton Press and Dakotan.....	7.60
Rapid City Daily Journal.....	7.60
Pierre Weekly Dakotan.....	7.60
For election blanks, legislative supplies and repairs:	
State Publishing Company.....	\$946.12
Olivet Printing Company.....	719.00
News Printing Company.....	648.19
Hipple Printing Company.....	534.13
Brown & Saenger.....	428.88
Binder & Borst.....	413.88
Louis Kehr	403.88
Will A. Beach Printing Company.....	132.40
N. C. Nash's Sons.....	84.80
Chr. Aisenbrey	69.00
R. L. Kelly	78.00
N. P. Christensen.....	50.00
Chas. L. Hyde.....	240.00
City of Pierre.....	59.57
W. A. Metcalf.....	135.65
Hatch & Fisher.....	2.30
J. L. Lockhart.....	55.70
J. Lewis	11.70
J. C. Wild.....	3.20
John R. Nye.....	16.62
Clow-Schaaf Lumber Company.....	99.75
Henry Whitenack	22.75

For additional supplies for the legislature..... 250.00
 Compensation for clerk in taking care of legislative supply

room, sixty days at \$4.00 per day..... 240.00

§ 2. Duty of State Auditor] The state auditor shall issue warrants for the aforesaid sums of money hereby appropriated, or any part thereof, upon receipt of itemized vouchers duly approved by the secretary of state, filed in his office and the treasurer shall pay the same when presented.

§ 3. Emergency] Whereas, there are no availing funds with which to pay such expenses, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 63

(S. B. 209)

AUTHORIZING CONSOLIDATION OF FUNDS IN THE OFFICE OF ATTORNEY GENERAL

AN ACT to Authorize the Consolidation of Funds Heretofore Appropriated for the Office of Attorney General.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of State Auditor and Treasurer] The state auditor and the state treasurer are hereby authorized and directed to consolidate into one fund the appropriation of 1905 for the fiscal year of 1906 for the office of attorney general for clerk hire and expenses and the appropriation for that year for stationery, office supplies and incidentals, and that the funds so consolidated be designated as the general expense fund for that office.

§ 2. Repeal.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. Emergency] Whereas there is a deficiency in the clerk hire and expense fund of said department and whereas there is sufficient funds heretofore appropriated in the stationery, office supplies and incidental fund to meet such deficiency,

An emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1907.

ASSESSMENT AND TAXATION

CHAPTER 64

(S. B. 111)

RELATING TO THE ASSESSMENT AND TAXATION OF CORPORATE PROPERTY

AN ACT Providing for the Assessment and Taxation of the Property of Railway, Telegraph, Telephone, Express and Sleeping Car Companies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Property Assessed by State Board of Assessment and Equalization] All property, real and personal, belonging to any railroad company in this state, and necessarily used in the operation of its line or lines of railway in this state, shall be assessed for the purposes of taxation by the state board of assessment and equalization and not otherwise; and in making said assessment the said board shall, among other things, take into consideration the value to said railway company of its franchises, rights and privileges granted under the laws of this state, to do business as a common carrier in this state; and for the purpose of aiding said state board of assessment in making said assessment, it is hereby made the duty of the board of railway commissioners to collect information and facts concerning the value of the property of each railway company in this state and to make an estimate of said value and to make and file with the state auditor on or before the first day of June each year a written and detailed report of such information, facts and estimate. In said report the board of railway commissioners shall make a separate estimate of the value of that part of the railroad property, including terminals, depots, warehouse lots, sidings, passing tracks, switches, roundhouses, shops, yards, grounds and other structures which are situated within the limits of an incorporated city or town. Nothing in this act shall be so construed as to prevent the local assessment and the taxation of all property of such railway company, both real and personal, as is not actually and necessarily used in the operation and maintenance of its lines of railway.

§ 2. Statement by Officer Must be Filed with Board] It shall be the duty of the president, secretary, or other accounting officer thereto duly authorized, of any railroad company owning, leasing or

operating any railroad within this state, to furnish the state board of assessment and equalization on or before the first day of June of each year, a statement signed and sworn to by such officers, embracing and showing for the year ending April 30th preceding:

First. The whole number of miles of main line or lines and branches thereof owned, operated or leased in the state by the railroad company making the return, and the value thereof per mile.

Second. The number of miles of main line or lines and branches thereof owned, operated or leased by such company and the number of miles of side track and the value thereof per mile, the quantity of lands used for gravel or sand beds or for snow protection and the number and character of buildings and value thereof and width of right of way and width and length of warehouse lots, located in each county in the state.

Third. The number of miles of main line, and the number of miles of side tracks and passing tracks and value thereof, the width and length of right of way, the number and size of warehouse lots upon or contiguous to the right of way, the size, cost, and character of the passenger depot, freight depot, warehouse or warehouses, shops, turn-tables, roundhouses, engine stables, coal houses, stock yards and of all other buildings, the amount of ground used for yards in addition to ground already specified, and the quantity of unplatted land held or used exclusively for railway purposes, owned by said company and situated within the incorporated limits of each city or town, and the value thereof, and of any terminals therein owned by said company.

Fourth. The number of engines, passenger, mail, express, baggage, freight and other cars owned by said company and used in operating such railroad in this state; and on roads having various lines and branches within the state, the statement shall show the actual amount of rolling stock owned by said company, in use on each of said lines and branches within this state during the year for which the report is made.

Fifth. The total gross earnings of the company for the year for which the report is made, the amount paid out for operating expenses, for taxes, for interest on bonds, and for permanent improvements.

Sixth. The total net earnings of the company for the year for which the report is made, and the total number of miles owned and operated.

Seventh. The total gross earnings of the various lines and branches owned and operated by said company within this state during the year for which the report is made, the amount paid out of the same for operating expenses incurred in operating such lines and branches, the total amount paid out for taxes upon said property within the state, the amount paid out for interest on bonds issued upon the lines and branches in the state, the amount of such bonds per mile and the interest which they bear, and the amount paid out for permanent im-

provements upon the lines and branches within the state during said year.

Eighth. The per centum paid to the stockholders of said company during said year as dividends, upon both common and preferred stock, and the surplus representing undivided profits on hand at the time of making said statement.

§ 3. Valuation and Assessment—When Made] The valuation and assessment of the property of railroads by the said board of assessment and equalization shall be made as of the first day of May and shall be in the same ratio as that of the property of individuals, and such assessment shall be made upon the main line or lines, and branches thereof within the state separately, and shall include the right of way, road bed, bridges, culverts, rolling stock, depots, yards, shops, buildings, gravel or sand beds, lands for snow protection, and all other property, real and personal, used in and employed about and incidental to the operation and maintenance of such railroads and branches thereof. In assessing a railroad and its equipment and property, the said state board of assessment and equalization shall consider the earning power of the property as shown by its gross and net earnings, the value of the franchise or other privileges granted by the state under which it has the right of eminent domain and the right to do business within the state, and any and all other matters necessary to enable them to make a just and equitable assessment of the value of such property per mile in each county through which said railroad passes. Said board shall determine and fix separately the aggregate value of the property described in subdivision three of section two of this act, which is located within the corporate limits of any city or town.

§ 4. Board to Transmit Statement to County Commissioners] The state board of assessment and equalization shall transmit to the board of county commissioners of each county, through which any such railroad runs, a statement showing the length of main track, of main line or lines, and the branches thereof within such county not located within the corporate limits of any city or town, and the assessed value per mile of said main line or lines, and branches as fixed by a pro rata distribution per mile of the assessed value of the whole property, except that part located within the corporate limits of cities or towns, as aforesaid, and said statement shall be entered upon the proper records of said several counties. Said board shall also transmit to the mayor and city council of each city and the board of trustees of each incorporated town through, or into which any such railroad extends, a statement showing the total assessed valuation fixed by said board upon that part of said railroad property described in subdivision three of section two of this act which is located within the corporate limits of such city or town and said statement shall be entered upon the proper records of said city or town and a transcript

thereof transmitted to the county auditor of the county in which such city or town is located, to be by him listed for taxation the same as other property within such city or town assessed by the assessor thereof.

§ 5. Duty of County Commissioners] It shall be the duty of the board of county commissioners of all counties receiving such statements from the state board of assessment and equalization, at their first meeting after receiving such statement, to make and enter in the proper records, an order stating and declaring the length of the main track of road and branches and assessed value of such road and branches lying within each township, and lesser taxing district in their counties respectively, through or into which said road or branches thereof run, as fixed by the rate of assessment per mile as made by the state board of assessment and equalization, and when received, shall also enter in the proper records, the assessments made by said board of the railroad property in such county located within the limits of each city or town transmitted to the mayor and city council or board of trustees thereof, and the amounts so entered of record shall constitute the taxable value of said property for all taxable purposes, and shall transmit a copy of such orders and records to the city council or trustees of each city or incorporated town or township and the proper officer of each lesser taxing district, and also to said railway company.

§ 6. Rules of Taxes] All such railroad property so assessed by said state board of assessment and equalization shall be taxable upon said assessment at the same rates and for the same purposes as the property of individuals within such counties, cities, incorporated towns, townships and lesser taxing districts. The proper officer of each taxing district shall certify to the county auditor the several rates of taxes to be levied in said district, and the said county auditor shall extend the taxes against said assessment in a book to be called the "Railroad Tax Book," and shall transmit a copy of the rates so extended to each railroad company.

§ 7. Duty of County Auditor] The county auditor shall make and deliver a duplicate of said railroad tax book to the county treasurer and the county treasurer shall be charged with the collection of said railroad taxes in the same manner and under the same provisions and restrictions that are imposed upon such treasurer in the collection of the taxes of individuals; and the amount due each city, incorporated town, township or lesser taxing district shall be paid over when collected by the county treasurer to such city, or town, township or lesser taxing district.

§ 8. Delinquent Taxes] All laws in force relating to the enforcement of the payment of delinquent taxes shall be applicable to all taxes levied under the provisions of this act and whenever any taxes levied under the provisions of this act shall become delinquent, the

county treasurer having control of such delinquent taxes, shall proceed to collect the same in the same manner and with the same right and power as a sheriff under execution, except that no process shall be necessary to authorize him to sell engines, cars or any other rolling stock for collection of said taxes.

§ 9. Company Must File Map with County Auditor] Every railroad company shall file with the county auditor of each county through or into which its line or lines of railroad run, a map, showing the right of way, depot grounds, yard room, gravel or sand beds, and lands for snow protection, and lands otherwise used by it in the maintenance and operation of its railway at the date of filing such map, showing lots or parts of lots and blocks in cities and towns and the number of acres in each government subdivision and it shall be the duty of the county auditor to provide for the exception from assessment by the local assessor all such right of way, depot grounds, yard room, gravel or sand beds and lands for snow protection, or lands otherwise used in the operation and maintenance of its railway. It shall be the duty of the county register of deeds to notify the county auditor of any deed to any railway company for the right of way, depot grounds, yard room, gravel or sand beds, or lands for snow protection, that may be filed in his office for record so that the same may be entered by such county auditor on said map for the purpose above mentioned.

§ 10. Failure to Comply—Duty of Board of Railway Commissioners] In case the proper officer of any railroad company shall fail to make the statement under oath herein named, the state board of assessment and equalization shall add twenty-five per cent to the assessable value of the property of such company.

For the purpose of collecting the information and facts, and to enable them to arrive at a correct estimate of the value of railroad property in this state for their own use in making maximum passenger and freight schedules, and for the use of the state board of assessment and equalization in assessing the value of said property for purposes of taxation, the board of railway commissioners are hereby authorized to employ a competent expert to assist them in making such investigation.

§ 11. Statement Must be Furnished to State Auditor] It shall be the duty of the president, secretary, general manager or superintendent of every telegraph or telephone company doing business in this state, to furnish to the state auditor on the first day of July of each year, a statement under oath in such form as the auditor may prescribe showing the following facts:

First. The total number of miles owned, operated, or leased within the state by such company, together with the number of separate wires thereon, the kind of metal used for such wires, the kind and dimensions of the poles used, (and the distance the same are set

apart from each other,) the average cost of building and equipping said line per mile, and stating the counties through or into which the same extend, or in which such company does business.

Second. The number of miles in each county and the number of stations and exchanges belonging to the company and location therein together with the number of telegraph or telephone instruments used in such county.

Third. The average number of poles per mile used in constructing said lines; and a telephone company shall also give the number and names of cities and towns in which such company maintains local telephone exchanges, under an ordinance granted by a city or town, and the value of the entire plant, including all wires, poles, instruments, office furniture and apparatus, franchises and equipment considered as one property in operation.

Fourth. The number of offices maintained by the company in this state and the total gross and net receipts of all said offices for the year ending April 30th preceding the making of said statement; the amount paid out for operating expenses, for taxes, for interest on bonds and for permanent improvements.

Fifth. The per centum paid to stockholders of said company during said year as dividends upon both common and preferred stock and the surplus on hand representing undivided profits at the time of making said statement; the total bonded debt and rate of interest and the total capitalization of the company.

Such statement shall be made according to such forms and instructions as may be prescribed by the state auditor and with reference to lines owned and operated on the first day of May of the year for which the return is made.

§ 12. Railroad Commissioners to Ascertain Value of Telegraph and Telephone Property] For the purpose of aiding the state board of assessment and equalization in making an assessment of the property of telegraph and telephone companies, it is hereby made the duty of the board of railway commissioners to collect information and facts concerning the value of the property of each telegraph and telephone company in this state, including the value of its franchises, and to make an estimate of the value thereof and to make and file with the state auditor on or before the first day of July each year, a written and detailed report of such facts, information and estimate, and for the purpose of securing facts and information said board is hereby authorized to inspect the books and records and property of said companies and employ an expert when deemed necessary.

§ 13. In Case of Failure to Comply] In case any telegraph or telephone company refuses to make the statement herein required under oath and at the time specified, the state board of assessment and equalization shall add twenty-five per cent to the assessable value of the property of such company. The board of assessment and equal-

ization shall consider all the statements, facts, information and estimates filed as aforesaid, and any other information obtainable concerning the value of the property of said companies and may add any property omitted therefrom, and shall proceed to assess said property and determine its value, including the value of its franchises, which shall be made as of the first day of May and shall be in the same ratio as that of the property of individuals.

§ 14. Board to Make Tax Levy] Said board after assessing the value of said property, shall proceed to levy a tax thereon, which shall be equal to the average amount of state, county, school, municipal, road, bridge and other local taxes levied upon other property for the preceding year, and the auditor shall notify each company of the amount of taxes so levied.

Each telegraph or telephone company so assessed shall, on or before the first day of March in each year, pay to the state treasurer the amount of tax so levied on its property, which shall be in lieu of all other taxes. If any telegraph or telephone company shall fail to make and file said statement each year as herein provided, or shall file a false statement, it shall forfeit to the state not less than five hundred dollars nor more than five thousand dollars to be recovered in the name of the state in any court of competent jurisdiction.

The state board of assessment and equalization shall cause a statement to be transmitted to the county auditor of each county in which any lines or office or other property of any telegraph or telephone company is situated, showing the amount or proportion of such property and value thereof, situated in such county, and the state treasurer shall remit to the treasurer of each of such counties their proportionate share of such tax; and said county treasurer shall apportion and distribute the same among the various county, school, municipal, road and other local tax funds pro rata according to the levy for such purposes made in the preceding year.

§ 15. Time of Assessing Railroad Property] The state board of assessment and equalization shall assess all property of said railroad companies in the manner aforesaid on the 3rd Monday in July of each year, and all the property of telegraph and telephone companies in the manner aforesaid on the 4th Monday of July each year.

§ 16. Express and Sleeping Car Companies—Statement of] Every express company and every sleeping car company doing business in this state must transmit to the auditor of the state a statement of its business done within this state for the year ending on the thirtieth day of April preceding, which statement must be furnished on or before the first day of July of each year and shall contain the following items:

First. The total number of employes engaged by such company within the state, and the number thereof in each county.

Second. The total number of offices maintained by it within the

state, and the number thereof in each county; the value of all office furniture, fixtures and real estate owned by it within this state.

Third. The number of miles of railroad over which such express or sleeping car company conducts its business within the state, and the number of miles thereof in each county.

Fourth. The total number of express cars or sleeping coaches owned by such company, and used within the state, and the number of such express or sleeping cars leased and controlled, but not owned by such company, and used within this state, or operated under lease or contract in any manner.

Fifth. The gross earnings of the total business of such company transacted within this state for the year ending April 30th preceding, and the value of all the property of such company used in this state.

§ 17. Property of Express and Sleeping Car Companies—When Assessed] If the statement aforesaid shall not be received by the said auditor by the first day of August of each year, he shall thereupon proceed to obtain the facts and information aforesaid in any manner that may appear most likely to secure the same correctly, and for the purpose of aiding the state board of assessment and equalization in assessing the value of the property of such companies, it is hereby made the duty of the board of railway commissioners to collect information and facts concerning the value of the property of each express and sleeping car company in this state and to make an estimate of said value and to make and file with the state auditor on or before the first day of July of each year a written and detailed report of such information, facts and estimate.

The state board of assessment and equalization shall, on the first Monday of July each year assess all the property of every express and sleeping car company doing business in this state and used in the operation and maintenance of its business, and in doing so shall take into consideration the gross earnings of said company within the state for the year ending on the thirtieth day of April preceding the statements made by said companies and by the board of railway commissioners and any and all other matters necessary to enable them to make a just and equitable assessment of said property in the same ratio as the property of individuals. All the statements aforesaid and information received shall be laid before the board of assessment and equalization which board shall review said statement or information and may change the valuation given or add to said statement any property omitted therefrom, and said board shall levy a tax upon said property, which tax shall be equal to the average amount of state, county, school, municipal, road, bridge, and other local taxes levied upon other property for the preceding year, and the auditor shall notify each company of the amount of taxes so levied.

§ 18. Form of Statement] The statement of said companies required by this act shall be made according to such forms and instruc-

tions as may be prescribed by the state auditor and with reference to property owned on the first day of May of the year for which the return is made. If any express or sleeping car company aforesaid shall fail to make said statement, it shall forfeit to the state not less than five hundred dollars nor more than five thousand dollars to be recovered in the name of the state in any court of competent jurisdiction.

§ 19. Taxes—When Paid] Each express and sleeping car company so assessed shall on or before the first day of March of each year, pay to the state treasurer, the amount of tax levied on its property for the year preceding, which shall be in lieu of all other taxes.

§ 20. Apportionment of Taxes] The state treasurer shall apportion the amount of taxes received under the provisions of his act between the state and the various counties in which such company is doing business, as herein provided.

The amount to which each is entitled shall be determined by the state board of assessment and equalization and the county treasurer shall distribute the portion received by his county to the various county and local funds according to the levies made upon other property for the preceding year.

§ 21. In case any telegraph, express, telephone, and sleeping car companies doing business in this state shall fail or neglect to pay the tax due from it to the state for a period of thirty days after the same shall have become due, there shall be added to such tax a penalty of twelve per cent per annum.

§ 22. Property May be Destrained] At any time after the expiration of thirty days from the time any such tax has become due and payable, the state treasurer shall distrain sufficient property of the delinquent to pay the same together with said penalty and the cost of distraint, and sale, and shall immediately advertise the sale of the same in at least three newspapers published in the state, stating the time, when, and place where such property shall be sold, and four weeks' notice of the time and place of such sale shall be given.

Such sale shall take place at some point in this state, and the proceeds thereof shall be applied to the payment of such tax, penalty and cost.

§ 23. Notice] The state board of assessment and equalization shall give at least ten days' notice of the time and place of its meeting, provided for in this article, to the officer of any railroad, telegraph or telephone company or other corporation making a return of the property of their company to the said board for the purpose of assessment and taxation, of every increase made by said board on the valuation of any of the property returned as aforesaid, for the purposes aforesaid, or of any addition made to said returns, and said companies shall have the right to appear and be heard, before said board in all matters relating to the assessment of the property of said company.

§ 24. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 25. Emergency] There being serious defects in the assessment laws in relation to the assessment of the property of railway, telegraph, telephone, express and sleeping car companies, an emergency is hereby declared to exist and this act shall be in force from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 65

(S. B. 84)

RELATING TO TAXATION OF FIRE INSURANCE COMPANIES

AN ACT Entitled an Act Relating to the Taxation of Fire Insurance Companies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 675 of the Revised Civil Code of 1903 be and the same is hereby amended to read as follows:

Section 675. Every fire insurance company doing business in this state, except mutual companies organized under the laws of this state, shall, at the time of making the annual statement, pay into the state treasury as taxes two and one-half per cent of the gross amount of premiums received in this state during the preceding year, taking duplicate receipts therefor, one of which shall be filed with the commissioner of insurance, and upon the filing of such receipt, and not until then, shall the commissioner of insurance issue the annual certificate as provided by law, and the said sum of two and one-half per cent shall be in full of all taxes, state and local, from such insurance company. Provided, that all mutual companies organized or operating under the laws of this state shall, at the time of making the annual statement, pay into the state treasury as taxes one per cent of the gross amount of premiums received in this state during the preceding year upon policies issued on property in any city, town or village having an organized fire department as provided in Article 5, Chapter 16, Political Code of 1903.

§ 2. Amendment] That section 1524 of the Revised Political Code of 1903 be and the same is hereby amended to read as follows:

Section 1524. The said auditor on the first day of July thereafter shall issue and deliver to the treasurer in each city, town or village having an organized fire department entitled to benefits under this article, his warrant upon the state treasurer for an amount equal to two and one-half per cent of the premiums received upon policies

issued on property in such city, town or village by any fire insurance company, except mutual companies, and for an amount equal to one per cent upon the premiums received upon policies issued on property in any such city, town or village by any mutual fire insurance company, which warrants shall be numbered consecutively and shall each specify the date of its issuance and to whom payable, and such warrants shall be paid by the state treasurer to the treasurer of any such city, town or village, upon the presentation thereof, and when so received by said treasurer the same shall be paid over to said company or companies, in equal proportion, having a membership of at least fifteen members for a period of eight months prior to the date of the certificate of the auditor or clerk, as provided in section 1522, and having the management of at least one steam, hand or other fire engine, hook and ladder truck or hose cart, upon the written order of such company or companies, approved by the city council, trustees or other governing body [of] such city, town or village.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 18, 1907.

CHAPTER 66

(H. B. 249)

AUTHORIZING BOARD OF ASSESSMENT AND TAXATION TO LEVY TAX FOR DEFICIENCY

AN ACT Authorizing and Empowering the State Board of Assessment and Equalization to Levy a Tax of Two Mills on the Dollar on the Assessed Valuation of All Taxable Property in the State at Their Annual Meetings in August, 1907, and August, 1908, for the Purpose of Paying the Deficiency of the Preceding Years.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Tax Levy for 1907] It appearing that the ordinary expenses of the state for the fiscal year ending June 30, 1907, exceed the income of the state for such year, the state board of assessment and equalization of the state of South Dakota is hereby empowered and authorized at their annual meeting in the month of August, 1907, to levy a tax of two mills on each dollar, in addition to the ordinary levy of two mills on the dollar, on the assessed valuation of all taxable property in the state, to be ascertained by the last preceding assessment made for state and county purposes, such additional levy of two mills on the dollar to be so made for the purpose of paying the deficiency of the preceding year, together with the estimated expenses of the ensuing year.

§ 2. Levy for 1908] It appearing that the ordinary expenses of the state for the fiscal year ending June 30, 1908, exceed the income of the state for such year, the state board of assessment and equalization of the state of South Dakota is hereby empowered and authorized at their annual meeting in the month of August, 1908, to levy a tax not exceeding two mills, (the amount to be determined by the emergency existing at that time), on each dollar, in addition to the ordinary levy of two mills on the dollar, on the assessed valuation of all taxable property in the state, to be ascertained by the last preceding assessment made for state and county purposes, such additional levy of two mills on the dollar to be so made for the purpose of paying the deficiency of the preceding year, together with the estimated expenses of the ensuing year.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1907.

CHAPTER 67

(H. B. 38)

RELATING TO A HARD FIBER AND CORDAGE PLANT

AN ACT Authorizing a Levy of One and One-fourth Mills on the Dollar for the Purpose of Establishing, Maintaining and Operating a Hard Fiber Twine and Cordage Plant at the State Penitentiary.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Tax Levy] The state board of assessment and equalization of the state of South Dakota is hereby authorized and directed, at their annual meeting in the month of August, 1907, to levy a tax of one and one-fourth mills on each dollar of the assessed valuation of all taxable property in the state of South Dakota, to be ascertained by the last preceding assessment made for state and county purposes, such levy to be made for the purpose of establishing, installing, maintaining and operating a hard fibre twine and cordage plant at the state penitentiary at Sioux Falls, South Dakota, said levy shall be made for the year 1907 only.

§ 2. How Collected] The tax raised by said levy shall be collected as in other cases and returned to the state treasurer, where it shall be known as the revolving fund for twine plant, and shall be used only for the purposes set forth in chapter 172 of the Session Laws of 1905.

§ 3. Duty of Warden] The warden of the state penitentiary, together with the board of charities and corrections, shall, at as

early a date as practicable, and after a sufficient sum has been collected into the special fund as aforesaid, carry out the provisions of this act, and of the provisions of chapter 172 of the Session Laws of 1905, using prison labor in the construction of said plant and in the operation of the same; provided, that expert labor may be used at the discretion of said warden and board.

§ 4. Duty of State Treasurer] In case money should be collected and turned into the state treasury under the provisions of this act before the same is actually required to be used for the purposes aforesaid, the state treasurer is authorized and directed by and with the approval of the board of charities and corrections to deposit said money, not immediately needed as aforesaid, in banks of this state for a period not exceeding six months at an interest rate of not less than 3 per cent per annum, said banks and depositories to be approved by the governor; and provided, further, that the treasurer shall require security for such deposits from the said banks; and provided, further, that all money belonging to said revolving fund which cannot be deposited as above provided, shall be deposited at not less than 2 per cent per annum on daily balances in banks to be designated as aforesaid.

§ 5. Warden Must Report] It shall be the duty of the warden of such penitentiary to report to the auditor of the state and pay to the treasurer of the state between the first and tenth day of each month, the full amount of money received by him for the previous month from sales or collections for sales of the product of such plant, accompanying said report with schedule showing amount received from each person, giving the name of each person.

§ 6. Moneys—How Paid] All moneys expended under this act shall be paid out of the treasury by warrants drawn from vouchers, as other funds are drawn for said penitentiary; Provided, that in the purchase of materials for the manufactured product and transportation of the same, which must be paid for in cash before delivery, payment must be made upon the verified statement of the warden of the state penitentiary, approved by the board of charities and corrections, which verified statement shall be held by the auditor until the duly receipted bill can be obtained by the warden, and filed with the said verified statement; and, provided, further, that in all cases the warden shall take a receipted bill for money paid out under the provisions of this act, and immediately forward the same to the state auditor for filing with the verified statement as aforesaid.

§ 7. Claim] In cases where the product of said plant shall be sold and not paid for on delivery the claim of the state for such unpaid purchase money shall be a preferred claim over all others against such debtor.

Approved March 2, 1907.

CHAPTER 68

(H. B. 99)

**AUTHORIZING THE CONSOLIDATION OF STATE TAX FUNDS AND
PLACING SAME TO CREDIT OF THE GENERAL FUND**

AN ACT to Authorize the Consolidation of State Tax Funds and Placing to the Credit of the General Fund of the State.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Auditor and Treasurer] The state auditor and state treasurer are hereby authorized and directed to consolidate into one account the accounts heretofore kept between the state and the several counties of the state, of taxes levied and collected for state purposes for the year 1906 and prior years, and to place to the credit of the general fund of the state all collections hereafter received from said years' state tax levies.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. An emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 18, 1907.

CHAPTER 69

(H. B. 56)

EXEMPTING CERTAIN PERSONS FROM PAYMENT OF POLL TAX

AN ACT Entitled an Act Exempting the Members of Volunteer Fire Departments in Incorporated Cities and Towns in this State from the Payment of Poll Tax.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Persons Exempted] The members of any regularly organized volunteer fire department in any incorporated town or city of the state of South Dakota shall be exempt from the regular "road poll tax" so long as they shall remain members of said organization, or until they shall have received the regular certificate of service and exemption hereinafter provided for.

§ 2. Certificate of Exemption] The members of any volunteer fire department of any incorporated city or town after ten years of active continuous service as members of said organization shall be entitled to a certificate of exemption, to be issued by the chief of the

said department and attested by the secretary of such department, and shall thereafter be duly attested by the city auditor or town clerk under the corporate seal. Such certificate shall be recorded in the minutes of the department, and a proper record shall be made of such certificate in the office of the said city auditor or town clerk. It is further provided that such certificate may be recorded in the office of the state auditor, and when so recorded shall be constructive notice to the various officials of the existence thereof. The state auditor shall receive as a fee for recording such certificate a fee of fifty cents and no more, to be paid by the party holding such certificate.

§ 3. Certificate—Proof of Exemption] Any person holding the certificate of exemption referred to and provided for in section 2 of this article shall be exempt from the payment of road poll tax so long as he shall remain a resident of this state, and such certificate when recorded and endorsed as provided for in said section 2 shall be conclusive proof of such exemptions, and shall be recognized by all officials in this state charged with the collection of such poll tax.

§ 4. All acts or parts of acts in conflict with this act are hereby repealed.

Approved February 25, 1907.

ASSESSORS

CHAPTER 70

(S. B. 211)

RELATING TO ASSESSORS

AN ACT Relating to and Fixing the Compensation of Assessors in Counties of This State Having a Population of Twenty Thousand or More, and Not Divided Into Township Organizations.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Compensation] That the assessors of the counties of this state having a population of twenty thousand or more, and which are not divided into township organizations, shall have and receive as compensation for all services to be performed by them or their deputies the sum of not to exceed \$1750, per annum, in full for all charges, for mileage, per diem or other fees whatsoever.

§ 2. Population—How Determined] That the population of such counties shall be ascertained and fixed by multiplying the total number of votes cast for governor at the last general election by five.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 4. Emergency] Whereas, an emergency exists, and is hereby declared to exist, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 71

(S. B. 177)

RELATING TO ASSESSORS

AN ACT Entitled an Act Relating to the Duties of County Assessors in Counties Having More Than Fifty Congressional Townships.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Assessor] In counties containing more than fifty congressional townships, and not organized into civil townships, it shall be the duty of the county assessor to, upon or about the first of April, enter upon the discharge of his duties as such assessor in doing the necessary office work, preliminary to the making of the regular annual assessment of real and personal property in his county, provided that all assessments and valuations shall be made as of May first in each year.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. Emergency] An emergency is hereby declared to exist and this act shall take effect from and after its passage and approval.
Approved March 3, 1907.

ATTORNEYS

CHAPTER 72

(S. B. 85)

RELATING TO ATTORNEYS AND COUNSELLORS AT LAW

AN ACT Entitled "An Act to Amend Section 686 of the Revised Political Code of 1903, as Amended by Chapter 78 of the Session Laws of 1903, Relating to Attorneys and Counsellors at Law.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 686 of the Revised Political Code of 1903, as amended by chapter 78 of the Session Laws of 1903, be, and the same is hereby amended so as to read as follows:

Section 686. Qualifications of) Every applicant for such admission must be at least twenty-one years of age, of good moral character and an inhabitant of this state, and must have actually and in good faith pursued a regular course of study of the law for at least three full years, either in an office of a member of the bar in regular practice in this state or other state, or of a judge of a court of record, or in some reputable law school in the United States, or partly in such office and partly in such law school, but in reckoning such period the study or school year of any such law school, constituting not less than thirty-six weeks, exclusive of vacation, shall be considered equivalent to a full year. Every resident of this state who commences the study of law on or after the taking effect of this act under either the tuition of an attorney at law or a law school, whether located in this state or elsewhere, shall file with the clerk of the supreme court a certificate of such attorney or the chief officer of such law school, as the case may be, showing his name and residence and the date when he commenced the study of law, which certificate shall be accompanied by a fee of fifty cents, and as to all such persons the three years study of law required by this section shall date from the date of filing such certificate.

Provided, any person having commenced the study of law prior to the taking effect of this act may state the time in such certificate and the period of study shall date from that date. And provided further, that said supreme court may, on sufficient grounds being shown by any applicant, excuse the filing of said certificate as of the date when his three years study of law began, and may permit such certificate to be filed at any time before such admission. Every such applicant for admission must also have an education substantially equivalent to that involved in the completion of a high school course of study of at least four years in extent. The following will be accepted as evidence of such attainments:

(a) A diploma from a college or university of approved standing; (b) a diploma or certificate of graduation from such high school; (c) a certificate of matriculation in the freshman or higher class in such college; (d) a diploma or certificate of an academy or normal school of approved standing; (e) a certificate of credits for studies pursued in a high school or college of approved standing, or both, showing the equivalent of such high school course. Every such applicant except graduates of the college of law of the state university entitled to admission to practice as by law provided shall be examined by the court or a commission of not less than five members of the bar, to be appointed in the discretion of and under such rules and regulations as the court may provide, as to his learning and skill in the law, and the court must be satisfied before admitting to practice that the applicant has actually and in good faith devoted the time hereinbefore required to the study of law, possesses the requisite skill and

learning therein, and has also the general education required by this act. Such certificate shall not be made unless the applicant has a standing on his written answers to the printed questions of the examiners of an average of seventy-five per cent on an examination embracing the following subjects: Evidence, law of real and personal property, torts, contracts, pleading, partnership, bailments, negotiable instruments, agency, suretyship, domestic relations, wills, corporations, equity, criminal law, constitutional law, the code of civil procedure and legal ethics.

Approved March 2, 1907.

BANKS

CHAPTER 73

(S. B. 229)

RELATING TO THE ORGANIZATION AND GOVERNMENT OF STATE BANKS

AN ACT to Amend Chapter 79 of the Session Laws of 1903 of the State of South Dakota, Entitled "An Act to Provide a Uniform System for the Organization and Control of Banks and Defining the Duties and Powers of the Public Examiner."

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That sections 8, 9, of chapter 79 of the Session Laws of 1903 be amended to read as follows:

Section 8. Powers] Upon duly making and filing articles of association and an organization certificate the association shall become as from the date of the execution of the same a body corporate, and as such and in the name designated in the certificate, it shall have power:

First. To adopt and use a corporate seal.

Second. To have succession for a period of twenty (20) years from its organization, unless it is sooner dissolved, according to the provisions of this act, or unless its franchise becomes forfeited by some violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend in any court of law or equity, as fully as natural persons.

Fifth. To elect or appoint not less than three directors and many more as is desired and by its board of directors to appoint a president, vice president, cashier and assistant cashier, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them, and appoint others to fill their places.

Sixth. To prescribe by its board of directors by-laws not inconsistent with the law, regulate the manner in which its stocks shall be transferred, its business conducted, and the privileges granted it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, bills of exchange, drafts and other evidences of debt; by receiving deposits, by buying and selling exchange, coin and bullion, by loaning money on personal, chattel and real estate security. Provided, that no loan shall be made to any officer or employe of the said bank without the consent and approval of its board of directors and provided further, that said bank shall be permitted to carry in its assets loans secured by first mortgage on real estate to an amount not to exceed (25) per cent of its total bills receivable; but no association shall transact any business except such as incidental and necessarily preliminary to its organization until it has been authorized by the secretary of state to commence the business of banking, and the secretary of state may withhold from any association his certificate authorizing commencement of business whenever he has reason to believe that the shareholders have formed the same for any other than legitimate objects, as contemplated by this act.

Additional Powers] Banking associations formed under this act shall have power to purchase, hold and convey real estate for the following purposes and no other:

First. Such as may be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees or mortgages held by such association, or shall purchase to secure debts due it; but no such association shall hold the possession of any real estate under mortgage or the title and possession of any real estate purchased to secure any debt due it for a longer period than five (5) years.

Section 9. Capital Required] No association shall be organized under this title in towns containing five hundred (500) inhabitants or less, with a less capital than five thousand dollars (\$5,000.00), in towns of over five hundred (500) and not over two thousand (2,000)

inhabitants with a less capital than ten thousand dollars (\$10,000.00), in towns of over two thousand (2,000) inhabitants the capital shall not be less than twenty-five thousand dollars (\$25,000.00) all of which shall be paid in full in money of the United States and no person, firm or corporation or association shall engage in the banking business without notifying the public examiner of the date that such institution desires to open and he shall cause an examination to be made to ascertain that the capital stock has been paid for in full in money of the United States and if the law in all respects has been complied with, the public examiner shall give his certificate of authority to open for business and no person, firm or corporation shall engage in the banking business without complying with the provisions of this act.

§ 2. All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 74

(S. B. 89)

RELATING TO CHECKS AND DRAFTS

AN ACT Declaring What Shall be Considered Due Diligence in the Collection of a Check or Draft.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Due Diligence Defined] In order to hold the maker, endorser, guarantor or surety of any check or draft deposited with or forwarded to any individual or bank for collection, or owned by any individual or bank, it shall be sufficient for said individual or bank to forward the same to their direct correspondents in the usual commercial way now in use, according to the regular course of business; and the same shall be considered due diligence in the collection of such check or draft.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. Emergency] It being deemed that an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 27, 1907.

BEEF AND HIDE INSPECTOR

CHAPTER 75

(H. B. 148)

RELATING TO COUNTY BEEF AND HIDE INSPECTOR

AN ACT Entitled an Act to Repeal Chapter 57, Session Laws of 1905, Relating to the Appointment of County Beef and Hide Inspector, Defining the Duties of said Inspector, and Requiring the Inspection of Slaughtered Beef Animals and the Hide Therefrom, and Providing Penalty for the Violation Thereof.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That Chapter 57 of the Session Laws of 1905 be and the same is hereby repealed.

Approved February 13, 1907.

BOARD OF AGRICULTURE

CHAPTER 76

(S. B. 224)

RELATING TO THE BOARD OF AGRICULTURE

AN ACT to Provide for a Board of Agriculture and a Secretary Thereof, to Make Such Secretary Ex-officio Commissioner of Immigration, and to Prescribe the Powers, Duties and Compensation of Said Board and Secretary, and to Make Appropriation Therefor.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Governor to Appoint] The state board of agriculture shall have supervision and control over the state fair grounds, the holding of an annual fair thereon, the collection of exhibits for the same, and the promotion of agriculture and horticulture, mining, manufacturies

and domestic arts. Said board shall consist of five members who shall be appointed by the governor on or before the first day of April, 1907, one of said members shall be appointed for the term of one year, two for the term of two years and two for the term of three years, or until their successors have been appointed. The term of each member thereafter shall be two years or until his successor has been appointed.

§ 2. Board Shall Appoint a Treasurer] Said board shall appoint some suitable person not a member thereof, as treasurer, and fix his compensation, which shall not exceed two hundred dollars per annum, who shall give a bond in such sum and with such security as the board shall direct, conditioned for the faithful discharge of the duties of his office. He shall hold his office during the term fixed by the board unless sooner removed by them. He shall keep an accurate itemized account of all money received and paid out by him and make an annual report thereof to the board, and make full settlement with the board. He shall pay out no money except upon orders drawn by the secretary pursuant to the authority of the board.

§ 3. Secretary—Ex-Officio Commissioner of Immigration] The secretary of said board shall be appointed by the governor and in addition to his duties as such secretary, shall be ex-officio commissioner of immigration for the state as hereinafter provided. Secretary shall receive a salary of fifteen hundred dollars a year and his necessary actual traveling expenses while in the discharge of his duties, which shall be in full compensation for his services as secretary of said board and as ex-officio commissioner of immigration. The term of his office shall be for two years and until his successor has been appointed and qualified. He shall qualify by executing a bond to the state of South Dakota in the penal sum of five thousand dollars, with some surety company authorized to do business in this state as surety, and conditioned for the faithful performance of all the duties of his office of secretary of said board and commissioner of immigration, and by taking the oath of office; which bond shall be approved by the governor and attorney general and shall, with the oath, be filed in the office of the secretary of state. He shall perform all such duties as may be prescribed by law or required by said board. The state shall pay the premium on said bond.

§ 4. Powers of Board] The board of agriculture, as such, shall have the power of a body corporate, to sue and be sued; to contract and be contracted with; to purchase, hold and sell property, erect buildings in connection with the state fair; hold state fairs at the city of Huron and fat stock shows at such times and places as the board may determine. It shall have sole control of the department of agriculture and may make such by-laws, rules and regulations in relation thereto and for the management of the business thereof as it may deem necessary. It shall maintain an office for the transaction of its

business, and hold its annual and regular meetings at the city of Huron.

§ 5. Annual Meeting—Report] It shall hold an annual meeting on the first Tuesday of November of each year, and thereupon make to the governor a printed report of its acts and doings, receipts and expenditures during the preceding year, and shall strictly account for all moneys received in the conduct of the state fair.

§ 6. May Appoint Special Police] It shall have the power to select and appoint as many persons to act as special police during the annual fair as may be necessary to insure peace and good order on and about the fair grounds, and shall issue to each of such police a certificate of authority to act as such, signed by the president and secretary of the board. Each policeman so appointed is hereby clothed with full police powers.

§ 7. Further Duties and Powers of Board] It shall have general power to collect exhibits, offer and pay premiums, fix the terms of admission, appoint judges, and to do any and all acts necessary in the conduct of an annual state fair.

§ 8. Duty of County Commissioners] The board of county commissioners of each county may appoint some suitable person to collect and send to the annual state or county fair or other like agricultural exhibitions an agricultural, horticultural, mineral and live stock exhibit and may expend each year for such purpose a sum not exceeding the sum of two hundred dollars.

§ 9. State Fair—When Held—Duty of Treasurer] Said board shall hold one state fair each year and upon the grounds provided for such purpose by the state at the city of Huron. A record of all sums received for admission, concessions and privileges, or for any purpose by said board, shall be placed in the custody of its treasurer and made a matter of record by him and shall only be paid out upon orders authorized by said board and drawn by the secretary. Any surplus remaining in the hands of the treasurer, after the payment of all reasonable and necessary bills, shall be paid over to the state treasurer by the treasurer of said board.

§ 10. Definition of Word "Fair"] The word "fair," as used in this act, shall be construed to mean a bona fide exhibit of the four principal classes of live stock and of poultry, together with mineral, agricultural and horticultural products, machinery, mechanical and fine arts.

§ 11. Moneys—How Paid] All funds appropriated by the state for maintenance of the state fair and for buildings and improvements shall be paid out only upon itemized vouchers duly verified and approved by the board of agriculture and endorsed by the president of the board and filed with the state auditor.

§ 12. Cannot be Pecuniarily Interested] No member of the board of agriculture nor secretary nor treasurer thereof shall be pe-

cuniarly interested in any contract made by said board, nor shall said members and officers employ any member of the family of any of them in any manner in connection with the conduct of the fair or of the general business entrusted to them.

§ 13. Trespass on Fair Grounds—Penalty] One of the duties of said board shall be to preserve and protect the buildings, trees, grounds and othr property placed under its care.

Any person trespassing upon the fair grounds belonging to the state, or committing depredation thereon, or upon the property of any agricultural society in the state, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than five dollars nor more than one hundred dollars, and shall be liable in a civil action for damages sustained by reason of such unlawful acts.

§ 14. Sale of Liquors Prohibited] No person shall keep any shop, booth, tent, wagon, building, or other place for the sale of spirituous liquors or sell or otherwise dispose of any spirituous liquors, or engage in any gambling at or within one-half mile of the place where the state fair or any agricultural, horticultural, or mechanical, county or district fair is being held. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than five nor more than one hundred dollars.

§ 15. Compensation of Board] Members of the state board of agriculture shall each receive the sum of three dollars per day for not exceeding thirty days in any one year, and their actual necessary traveling expenses, incurred in the performance of their duties.

§ 16. President and Vice President] In addition to a treasurer and secretary, the board shall have a president and vice president, who shall be elected at its annual meeting.

§ 17. Duty of Secretary as Ex-Officio Commissioner of Immigration] In addition to his duties as secretary of the board of agriculture, said secretary shall be ex-officio commissioner of immigration and it shall be his duty to look after and advance the immigration interests of the state and to encourage and promote the permanent settlement and improvement of all sections of the state. He shall have charge of the preparation in manuscript, the publication and distribution by mail and otherwise of any and all documents and articles of reading matter designed to convey correct and full information on all matters pertaining to the growth and development of the agricultural, mining, manufacturing and commercial interests of the state. He shall attend to all correspondence relating to immigration, and shall do all in his power by letter and by the use of published printed matter and through personal effort to secure the most liberal and extensive advertisement of the resources and opportunities of the state. It shall be his aim to induce the investment of capital in agriculture, in mining and in different industrial and mercantile pursuits, and to facilitate the coming to the state of persons and families seeking perma-

nent location for new homes. He shall procure the most favorable rates of fare obtainable from railroads, and other transportation companies for persons coming into this state, and where such persons have formed a colony or party of considerable number, he shall transmit to them all necessary information in his power to direct and assist them in making the necessary arrangement for transportation in reaching the state. He shall give out to the press of this and other states at any time, such parts of any reports in course of preparation, as may be sufficiently concluded to admit of publication, or such information regarding the statistics of the state as may, in his judgment, be of interest or value to the people, the purpose being to furnish to the people through the press as fresh information regarding the state and its industries and condition, as possible, without awaiting the official publication through biennial or other reports. He shall have power to employ such clerks, stenographers and assistants as may be necessary to carry out the provisions of this act.

§ 18. Report to Governor] He shall make an annual report to the governor on the 30th day of June each year, showing the work done, and a statement of moneys expended by him during the preceding year.

§ 19. It shall be the duty of the secretary of the Historical Society, superintendent of the census, the state officers, the several county auditors, county treasurers, and all assessors, to furnish to said commissioner all statistics, and information collected by them and in their custody relating to the population, the agricultural, mining, manufacturing, horticultural, commercial and industrial development of the state and the railroad lines therein when required by him and a wilful failure to do so, shall be deemed a misdemeanor punishable by law.

§ 20. Appropriation] To defray the expenses of said commissioner's office including salary, clerk hire, traveling expenses, distribution of advertising and reading matter for the publication of documents and procurement of such books of record as may be necessary, and to pay such other necessary and reasonable expenses as he may incur in the performance of his duties, there is hereby appropriated out of any funds belonging to the state, not otherwise appropriated the sum two thousand five hundred dollars for the remainder of the year ending June 30th 1907, or so much thereof as may be necessary, and five thousand dollars for the year ending June 30th 1908, and for the remainder of the year 1908, the sum of two thousand five hundred dollars, or so much as may be necessary, the same to be paid upon vouchers filed with the state auditor in the same manner as the salary and expenses of other state officers.

§ 21. Repeal] Sections 158 to 170 both inclusive of the Political Code and all acts and parts of acts in conflict with this act are hereby repealed.

§ 22. Emergency] Whereas an emergency is hereby declared to exist, this act shall be in force from and after its passage and approval.

Approved March 9, 1907.

BOARD OF CHARITIES AND CORRECTIONS

CHAPTER 77

(H. B. 176)

RELATING TO BOARD OF CHARITIES AND CORRECTIONS

AN ACT to Amend Section Two (2) of Chapter Eighty-six (86), of the Session Laws of 1903, Relating to the Expenses of the Members of the State Board of Charities and Corrections, and the Expenses and Salary of a Secretary of Said Board.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section two (2), of chapter eighty-six (86) of the Session Laws of 1903, be; and the same is hereby, amended to read as follows:

"The compensation of the commissioners of the board of charities and corrections shall be fifteen hundred dollars (\$1500.00) each, per annum, and necessary expenses while performing the duties of their office. Said board shall elect one of their number as president. They shall also elect a secretary who shall receive all necessary expenses, and also a salary equal in amount to that now provided by law, for the secretary of the state board of regents."

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

§ 3. Emergency] Whereas, an emergency is declared to exist, this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1907.

CHAPTER 78

(S. B. 168)

ALLOWING THE BOARD OF CHARITIES AND CORRECTIONS

AN ACT Allowing the State Board of Charities and Corrections to Grant a Right of Way to the South Dakota Central Railway Company Over Certain State Lands on Conditions.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Board May Convey] The state board of charities and corrections is hereby authorized to grant and convey to the South Dakota Central Railway Company, a strip of land sixteen feet on each side of the center of its track as now located and constructed, running in a northerly direction parallel with the track of the Chicago, Milwaukee & St. Paul company and fifty feet on each side of the center of its track from the point of its crossing of the track of the Chicago, Milwaukee & St. Paul Railway Company; the said strip of land being situated on the southwest quarter of the northwest quarter of section nine (9), township one hundred and one, (101), range forty-nine (49) west, Minnehaha county, South Dakota.

The said strip so to be granted, to be used only for the construction and operation of the main line of said railroad and when said land ceases to be used by said railroad company or its successors for railroad purposes, it shall revert to the state.

§ 2. Condition] The conveyance, however, shall be made only upon the express condition hereby made a condition precedent and in consideration of such grant and conveyance the said South Dakota Central Railway Company, shall, within four months from the passage and approval of this act, build and construct at its own expense under the direction of the state board of charities and corrections, a switch from the main line of said railroad to the South Dakota state penitentiary building and maintain and operate the same for the period of twenty-five years and so much longer as the said railroad and the state board of charities and corrections may agree upon.

And the said railway company and its successors shall at all times switch all cars that the state board of charities and corrections may direct from the city of Sioux Falls to the penitentiary buildings at a charge of not to exceed three dollars and a half (\$3.50) per car for switch charges.

§ 3. Emergency] Whereas, there is now no sufficient law upon the subject, and an emergency is hereby declared to exist, this act shall take effect and be in full force from and after its passage and approval.

Approved February 27, 1907.

BONDS

CHAPTER 79

(H. B. 146)

PERMITTING SURETIES ON BONDS TO LIMIT THEIR LIABILITY

AN ACT to Permit Sureties on Official Bonds to Limit Their Liability.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. May Limit Liability] Any surety on an official bond running to the state of South Dakota, or to any county thereof, may limit his liability thereon by inserting after his name the words "not to exceed," naming the amount to which he desires to limit his liability on said bond; provided, that when any such bond becomes insufficient for the purpose thereof, the approving authority shall require a new bond, or additional surety or sureties, as shall be necessary to restore the bond to the full amount of liability required by law.

§ 2. Emergency] Whereas, an emergency exists, this act shall take effect and be in force from and after its passage and approval.

Approved February 18, 1907.

CHAPTER 80

(S. B. 47)

RELATING TO BONDS OR INSURANCE ON STEAM THRESHERS

AN ACT to Amend Section 3145 of the Revised Political Code, Relating to Bonds or Insurance on Steam Threshers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 3145 of the Revised Political Code be and the same is hereby amended to read as follows: It shall be unlawful for any person to use a steam threshing machine in this state until he shall first enter into a bond with good and sufficient surety, in the sum of five hundred dollars, payable to the state; said bond to be approved by and filed with the clerk of the circuit court of the county where he resides, in case he is a resident of this state;

and if he be a non-resident, with the state auditor, conditioned to pay all damages arising from any fire caused by him in violation of the provisions of this article, and from any unlawful damages done or caused to any telegraph or telephone line by the moving of any traction engine, threshing machine or other vehicle or thing along or across any public highway; or in lieu of the foregoing bond and at his option the owner or operator of a steam threshing machine, operating in the state of South Dakota, may take a fire insurance policy to the amount of not less than five hundred dollars, in any solvent fire insurance company which may be legally authorized to write insurance in his state, providing for the payment of any loss or damage by fire caused by said threshing machine or engine and payable to the owner of the property damaged or destroyed as his interest may appear, and any insurance company writing this class of risks shall use such policy form as shall be applicable and approved by the state commissioner of insurance.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 18, 1907.

CHAPTER 81

(H. B. 281)

RELATING TO THRESHERS' BONDS OR INSURANCE AND PENALTY

AN ACT to Amend Section 3146 of the Political Code of the Revised Codes of 1903, Relating to Threshers' Bonds or Insurance and Penalty.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 3146 of the Revised Political Code of 1903 be, and the same is hereby amended to read as follows:

Section 3146. Violation] Any person who shall fail to execute and file the bond or take out and keep in force the policy of insurance required in the preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred (\$100) dollars nor more than three hundred (\$300) dollars.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1907.

BURGLARY

CHAPTER 82

(S. B. 103)

RELATING TO BURGLARY WITH EXPLOSIVES

AN ACT Entitled an Act Defining Burglary with Explosives and the Punishment Therefor.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Burglary in the Second Degree] A person who, with intent to commit burglary, breaks and enters in the night time a building and commits or attempts burglary by the use of nitro-glycerine, dynamite, gunpowder or any other high explosive, is guilty of burglary with explosives in the second degree.

§ 2. Burglary in First Degree] A person who, with intent to commit burglary, breaks and enters in the night time a building in which there is a human being, and commits or attempts burglary by the use of nitro-glycerine, dynamite, gunpowder or any other high explosive, is guilty of burglary with explosives in the first degree.

§ 3. Punishment] Burglary with explosives in the first degree is punishable by imprisonment in the state penitentiary for not less than twenty-five years and burglary with explosives in the second degree is punishable by imprisonment in the state penitentiary for not less than fifteen years and not more than twenty-five years.

Approved February 27, 1907.

CAPITOL BUILDING

CHAPTER 83

(S. B. 104)

RELATING TO THE CREATION OF A CAPITOL COMMISSION AND PROVIDING FOR THE CONSTRUCTION OF A STATE CAPITOL BUILDING

AN ACT Entitled an Act to Amend Chapter 163 of the Session Laws of 1905, Relating to the Creation of a State Capitol Commission to Provide for the Construction of a State Capitol Building and Providing Funds and Appropriating Moneys Therefor.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That sections 1, 2, 3, 4 and 5 of Chapter 163 of the Session Laws of 1905 be amended so as to read as follows:

Section 1. That for the purpose of procuring the erection and completion of a building to be used for state capitol purposes by the state of South Dakota on block twenty-one (21) in the Fourth Railway Addition to the town, now city of Pierre, in the county of Hughes and state of South Dakota, known as the capitol grounds, there is hereby created a board to be known as the state capitol commission. Said board shall consist of four members, to be composed of the governor, secretary of state, state auditor and commissioner of school and public lands, who shall serve as members of said board without compensation. The governor shall be ex-officio chairman of said board. A majority of said board shall constitute a quorum. Said board shall procure the erection of a capitol building on the above described premises, known as the capitol grounds, and complete the same. Said building shall be built of stone, brick and iron, as far as practicable, and shall be fire proof. All materials to be used in the construction of the same shall be procured in the state of South Dakota, provided the same are the products of said state and can be procured and delivered upon the site of said capitol building at a cost not exceeding five per cent more than the lowest amount for which material equally good could be procured elsewhere.

Said capitol shall contain all chambers, rooms, corridors, halls, safes, vaults and other features and appurtenances appropriate to a capitol building, and shall furnish proper and adequate accommodations for the legislative and executive departments, including all state officers, the supreme court, the judges, officers and employes of said court, the law library, the general state library and the department of history. It shall be the duty of said board (1) to prepare said grounds for said building; (2) to secure a plan and design appropriate to a capitol building of the state of South Dakota, the reasonable cost of which shall be six hundred thousand dollars (\$600,000) and no more, and to obtain proper architectural designs, plans and specifications and details in conformity with such plan and design; (3) to secure the erection and completion of said capitol building, conforming faithfully to such plan and design, provided the total cost of the erection and completion of said capitol building shall not exceed the sum of six hundred thousand dollars (\$600,000), and the board shall at all times have this object in view, and all plans accepted and all contracts awarded shall be accepted and awarded only after the board shall be satisfied that the cost of the building when it shall be completed shall not exceed this amount.

Said board is empowered to employ an architect and to do and perform any and all acts necessary to enable said board to carry out the provisions of this act.

Section 2. In order to carry out the provisions of this act and for the purpose of constructing said building, and to prepare the said grounds for the erection of the same, and to procure the said plans and

specifications, the commissioner of school and public lands of the state of South Dakota is authorized and empowered to and shall sell and dispose of sufficient of the lands granted to the state of South Dakota for the purpose of constructing buildings at the capital of this state, until the sum raised by such sales and rentals of said lands, together with the amount now in the treasury of the state of South Dakota already realized by the sale or rental of such lands, or which may hereafter be received by the state of South Dakota from such sales or rentals as have heretofore been made, shall amount to the sum of six hundred thousand dollars (\$600,000), and that such part of said amount now in the state treasury from the sale and rental of such lands and such other and further sums of money as may be realized from sales and rentals hereafter or heretofore made of such lands, aggregating the total sum of six hundred thousand dollars (\$600,000), is hereby declared to be and is made a fund in the state treasury known as the state capitol building fund. Said sum of six hundred thousand dollars (\$600,000) so raised and to be raised as aforesaid is hereby appropriated out of the state capitol building fund and placed to the use and disposal of the said capitol commission to be used for the purposes hereinbefore provided for.

Said lands prior to their sale shall be appraised in the manner provided by law for the appraisal of school lands. The board of school and public lands shall fix the minimum price at which said lands may be sold, and shall determine the manner of sale and make rules and regulations for the sale of said lands by the commissioner of school and public lands. Said lands may be sold for cash, or part cash and balance on deferred payments secured by first mortgage on the land sold. In case any of said lands are sold partly for cash and partly on time payments, the proceeds of the cash payments shall be covered into the state capitol building fund in the state treasury, and the cash proceeds on time payments, when collected, shall be covered into said capitol building fund in the state treasury. Said capitol commission shall have power to sell, assign and dispose of, without recourse, and at not less than their face value, all such real estate mortgage coupon notes and mortgages as may be given to secure deferred payments upon sales of said lands, and the cash proceeds of such sales or assignments shall when collected be covered into the said capitol building fund in the state treasury, except as hereinafter provided.

It is hereby declared to be the intent and purpose of this act that all moneys expended by said state capitol commission in the construction and erection of said building or in carrying out any of the purposes provided for by this act, shall be paid out of the moneys raised or collected as hereinbefore provided and from the moneys now in the treasury in the state capitol building fund, and shall not be taken from the general fund of the treasury, except as hereinafter provided.

Section 3. Disbursements] All disbursements on account of said building and expenses incidental thereto shall be made pursuant to certificate by the board, signed by a majority of the members thereof. All claims, bills and demands for labor performed, or materials furnished or other expenses, shall be presented to said board in duplicate and shall be passed upon by said board. If found correct, said board shall audit the same, preserving one duplicate and transmitting the other as audited or allowed to the state auditor, and shall issue a certificate to the effect that services have been rendered or materials furnished and that the person named therein is entitled to a warrant for the amount therein stated. Upon the presentation of said certificate, the state auditor shall draw his warrant for the amount allowed, to the order of the person named in said certificate, and said warrant shall be paid by the state treasurer upon demand, out of the state capitol building fund. If there be no moneys in the capitol building fund when any of said warrants shall be presented, they shall be registered and thereafter paid in the order of registration in the manner and as provided by Article 2, Chapter 21 of the Revised Political Code. From the date of their registration until called for payment, said warrants shall draw interest at the rate of six (6) per cent per annum, payable semi-annually on the first days of January and July in each year, out of the state capitol building fund; and said warrants shall be a first lien upon all the unsold portion of lands granted to the state of South Dakota for the purpose of constructing buildings at the capital of said state, and said lands shall remain charged with said lien until they are sold and the proceeds thereof covered into the state capitol building fund; provided, however, that when any piece, parcel or tract of said land is sold and the proceeds thereof covered into the state capitol building fund, said lien shall be deemed released and discharge as to said piece, tract or parcel of land.

Section 4. In the event that all the moneys derived as aforesaid from the sale and rental of the lands mentioned in sections 2 and 3 of this act and from time to time paid into the state capitol building fund shall on the first day of December, 1908, be less than six hundred thousand dollars (\$600,000) in the aggregate, then and in that event outstanding registered warrants theretofore drawn upon said capitol building fund shall in an amount not exceeding the sum of two hundred thousand dollars (\$200,000) be paid out of the general fund of the state in the state treasury.

Section 5. That for the purpose of providing for the payment of said capitol building fund warrants out of the general fund of the state, in the event that it shall become necessary to pay any of the said warrants out of said general fund as provided in section 4 of this act, there is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of two hundred thousand dollars (\$200,000) or so much thereof as may be necessary, to aggregate

said sum of six hundred thousand dollars (\$600,000) as in section 4 of this act provided. Said appropriation from the general fund shall be for the fiscal years of 1908 and 1909.

§ 2. That Chapter 163 of the Session Laws of 1905 be further amended by adding thereto the following sections numbered 6 and 7, respectively:

Section 6. That in the event any of said state capitol building fund warrants shall be paid out of the general fund of the state, as provided in sections 4 and 5 of this act, then and in such case it shall be the duty of the commissioner of school and public lands to turn into the general fund of the state, in the state treasury, all proceeds realized from the further sales and rentals of said lands until said general fund shall have been fully reimbursed for all moneys advanced in the payment of said state capitol building fund warrants, both principal and interest; and all of said lands then remaining unsold shall be charged with a lien in favor of the state of South Dakota until said general fund shall have been fully reimbursed as aforesaid. The good faith of the state of South Dakota is hereby pledged to the payment of any and all warrants that may be drawn upon the state capitol building fund under and pursuant to this act.

Section 7. Reports] Said board shall, on or before the 30th day of October, 1908, and on or before the 30th day of October, 1910, prepare and file with the governor of the state for his use and for the use of the legislature, a full detailed report of all its transactions to said dates, containing an itemized and classified statement of all expenditures.

§ 3. Emergency] Whereas, an emergency exists and is hereby declared to exist, this act shall be in force and shall take effect from and after its passage and approval.

Approved February 15, 1907.

CLERK OF SUPREME COURT

CHAPTER 84

(H. B. 44)

RELATING TO THE CLERK OF THE SUPREME COURT

AN ACT Entitled an Act Defining the Duties and Prescribing the Fees and Fixing the Salary of the Clerk of the Supreme Court.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Clerk—How Appointed] The clerk of the supreme court

shall be appointed by the judges of the supreme court, and shall hold his office during the pleasure of said judges.

§ 2. Oath of Office—Bond] The clerk of the supreme court before he enters upon the duties of his office shall take and subscribe the oath required of the state officers by the constitution and shall execute a bond to the state of South Dakota, with one or more sureties, to be approved by two of the judges of the supreme court in the penal sum of three thousand dollars conditioned for the faithful performance of his duties, which bond shall be for the use of the state and with the oath be filed in the office of the secretary of state. The said clerk may appoint a deputy who shall take the said constitutional oath which shall be filed with the court. The said clerk shall be responsible for the acts of his deputy. Said deputy shall be a stenographer, and shall receive a salary of fifty dollars per month.

§ 3. Duties of Clerk] The said clerk unless otherwise provided for by law shall secure the necessary records, seals, stationery, postage, and furniture for the use of the supreme court, to be paid for from such appropriations as the legislature from time to time shall make for the expenses of the supreme court, and all vouchers for the same shall be approved by one of the judges of said court.

§ 4. Salary of Clerk] The clerk shall receive an annual salary of eighteen hundred dollars payable upon proper vouchers in regular monthly installments.

§ 5. Fees to be Charged] It shall be the duty of the clerk to charge the following fees and collect the same in advance:

For each action or proceeding originally commenced in or brought to the supreme court by appeal or writ of error, (except habeas corpus cases and cases commenced in or brought to the court by the state,) to be advanced by the party commencing or bringing such action or proceeding, twenty dollars.

For each certificate of admission to practice as an attorney and counsellor at law, five dollars.

For each copy of any opinion, record or paper in his custody, ten cents per folio. Provided, that all actions and proceedings pending when this act takes effect shall be completed according to the schedule of fees heretofore in force, but all fees earned hereafter shall be paid into the state treasury according to the provisions of this act.

§ 6. Must Keep Account of Fees] Said clerk shall keep an accurate account of all official fees received by him and shall on the first day of each calendar month file with the state auditor a true detailed statement of such fees for the preceding month which statement shall be verified as true and correct by the affidavit of the said clerk appointed to such statement of fees. With this statement he shall file with the state auditor a receipt from the state treasurer showing all of such moneys so received to have been paid into the state treasury.

§ 7. Appropriation] There is hereby appropriated out of the state treasury the sum of nine hundred and fifty dollars to pay the salary of the clerk of the supreme court and deputy until the 30th day of June, 1907, which shall be paid the same as is the salary of other state officers and deputies.

§ 8. Emergency] An emergency is hereby declared to exist and this act shall take effect from and after its passage.

§ 9. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 8, 1907.

CIGARETTES

CHAPTER 85

(S. B. 52)

RELATING TO CIGARETTES

AN ACT Entitled an Act to Prohibit the Manufacture, Sale or Use of Adulterated Cigarettes, and Prohibiting the Use of Cigarettes by Minors.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Unlawful Manufacture and Sale—Penalty] Any person within the state who manufactures, sells or gives to any one, or uses any cigarette containing any substance foreign to tobacco shall be punished by a fine of not more than fifty dollars (\$50.00), or imprisonment in a county jail for not more than thirty days.

§ 2. Unlawful to Sell to Minors] Any person within this state who sells, gives to, or in any way furnishes any cigarettes, in any form to any person under twenty-one years of age shall be punished by a fine not to exceed fifty dollars (\$50.00) or imprisonment in the county jail not to exceed thirty days for each offense.

§ 3. Unlawful to Smoke or Use Cigarettes by Minors] Any person under twenty-one years of age who shall smoke or use cigarettes, in any form on any public highway, street, alley, park or other lands used for public purposes, in any public place of business, shall be arrested by any officer of the law, who may be cognizant of such offense; and further, it shall be the duty of all such officers, upon complaint of one citizen, to arrest such offenders and take them to

the proper court. The court shall impose a punishment at its discretion, in the sum of not to exceed ten dollars (\$10.00), or imprisonment in the county jail not to exceed five (5) days for each offense; provided if said minor person shall give information which may lead to the arrest of the person or persons violating section two (2) of this act, in giving to or selling, or in any way furnishing said minor person tobacco, and shall give evidence as a witness in such proceedings against said party or parties, the court shall have power to suspend sentence against such minor person.

§ 4. Any person who harbors any person under twenty-one years of age, or grants to them the privilege of gathering upon or frequenting any property or lands held by him, for the purpose of indulging in the use of cigarettes, in any form, shall be held in the same penalty as provided for in section two (2) of this act; provided, that no part of this act shall be construed as to interfere with the rights of parents or lawful guardians in the rearing and management of their minor heirs or wards within the bounds of their own private premises.

Approved March 9, 1907.

CITIES

CHAPTER 86

(S. B. 231)

PROVIDING FOR INCORPORATION OF CITIES UNDER COMMISSION

AN ACT Entitled an Act to Provide for the Incorporation of Cities Under Commission.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Cities Under Commission] In addition to the classes of cities now existing there is hereby created a further class entitled "Cities Under Commission."

§ 2. How Incorporated] Any city of the first, second or third class or under special charter can become incorporated under the provisions of this act.

§ 3. Question Submitted] Whenever of the legal voters of any city a number equal to fifteen per centum of the number of votes cast for mayor at the last previous municipal election at which a mayor

was elected in such city shall petition the mayor and council thereof to submit the question whether such city shall become incorporated under this act to a vote of the electors of such city, it shall be the duty of such mayor and council to submit such question accordingly at an election held within twenty days from the date of the filing of such petition with the auditor of such city, and to appoint a time and place at which said vote may be taken, and to designate the persons who shall act as judges at such election, but such question shall not be submitted oftener than once in any calendar year.

§ 4. Election—How Held] Excepting as herein provided such election shall be held in the manner provided by law for holding municipal elections in cities of the class to which such city may belong. The mayor of such city shall give at least ten days' notice of such election, by publishing a notice thereof in the official newspaper of such city. The ballots to be used at such election shall be in the following form: "For organization as a city under commission," or "Against organization as a city under commission." The judges of such election shall make returns thereof to the city council, whose duty it shall be to canvass such returns and cause the result of such canvass to be entered upon the records of such city. If a majority of the votes cast at such election shall be for organization as a city under commission, such city shall thenceforth be deemed to be organized under this act as soon as a board of commissioners shall have been elected and the members thereof shall have qualified.

§ 5. Judicial Notice] All courts in this state shall take judicial notice of the existence of cities organized under this act, and of the change of the organization of any city from its original organization to its organization under this act; and from the time of organization under this act, the provisions of this act shall be applicable to such city, and all laws in conflict therewith shall no longer be applicable. But all laws, or parts of laws, not inconsistent with the provisions of this act, shall continue in force and applicable to any such city, the same as if such change had not taken place.

§ 6. Corporate Name] Cities organized under this act shall be bodies politic and corporate, under the name and style of "City of (name)" and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes within and without the circuit of such city, have a common seal, and change the same at pleasure, and exercise all the powers hereinafter conferred.

§ 7. Rights Vested] All rights and property of every kind and description, which were vested in any municipal corporation, under its former organization, shall be deemed and held to be vested in the same municipal corporation, upon its being incorporated under the provisions of this act; but no rights or liabilities either in favor of or against such corporation, existing at the time of so becoming incor-

porated under this act, and no action or prosecution of any kind shall be affected by such change, but the same shall stand and progress as if no change had been made.

Provided, That when a different remedy is given by this act, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this act, the same shall be deemed cumulative to the remedies before provided, and used accordingly.

§ 8. Certificate to be Filed with Register of Deeds and Secretary of State] The corporate authorities of any city which may become organized under this act, shall within thirty days after organization hereunder, cause to be filed in the office of the register of deeds, in the county in which such city is situated, a certified copy of the entry made upon the records of the city, of the canvass of the votes, showing the result of such election, whereby such city became so organized, and such register of deeds shall record the same, and such corporate authorities shall also cause a like certificate to be filed in the office of the secretary of state, who shall file the same, and keep a registry of cities organized under this act. \

§ 9. Ordinances and Resolutions to Remain in Force] All ordinances and resolutions in force in any city when it shall organize under this act, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, or amended, notwithstanding such change of organization; and the making of such change of organization shall not be construed to effect a change in the legal identity as a corporation of such city.

§ 10. Board of Commissioners—Election and Qualification of] If a majority of the voters at such election shall have voted for incorporation under this act, it shall be the duty of the mayor and city council of such city to order an election to be held in such city on the next succeeding third Tuesday in April, at which election the qualified voters of such city shall elect a mayor and four commissioners, who shall constitute the board of commissioners of such city. Twenty (20) days' notice of said election shall be given by publication in the official newspapers of the city, and the mayor and city council shall fix the time and place for holding said election, and the manner of holding the same shall be governed by the laws of the state of South Dakota governing general municipal elections in the cities of the class to which such city may belong, excepting as herein specified. On the Tuesday following said election, or as soon thereafter as practicable, the said mayor and common council shall canvass the returns and declare the election of the candidates receiving the highest number of votes. The members of the board of commissioners first elected shall hold office until their successors are elected and qualified. Each of said members, within ten days after the official announcement of his election, shall qualify, as required by this act and failing

to do so his office shall become vacant. The term of office of the mayor and commissioners shall be five years; provided that at such first election under this act the mayor shall be elected for the term of five years and the other four commissioners for the terms of one, two, three and four years respectively, but the term of office of each of said four commissioners first elected shall be determined by lot.

§ 11. Commissioners are Successors to Mayor and City Council] The mayor and other members of the board of commissioners elected under this act, and their successors in office, shall be held and deemed, in law and in fact, the successors of the mayor and city council of such city, and upon the qualification of such mayor and commissioners, all the powers, rights and duties of the mayor and city council of said city shall cease, and from and thereafter the said board of commissioners shall have and exercise all the rights, powers and duties of the mayor and city council of cities as may be conferred by the constitution and laws of this state, and shall have and exercise all the rights, powers and duties conferred upon them, or either of them, by the terms of this act.

§ 12. Duties and Powers of Mayor—Compensation] The mayor shall have and exercise all the rights, powers and duties conferred upon him by the terms of this act. Said mayor and commissioners shall collectively constitute and be known as the "Board of Commissioners" of the city. They shall severally take an oath faithfully to perform the duties of their said office and shall each receive as compensation for his said services the sum of twenty-five dollars (\$25) per annum in cities of a population of two thousand or under by the last preceding federal or state census and fifty dollars (\$50) per annum additional for each additional one thousand, or major portion thereof, of population in cities having a population of more than two thousand, provided that in cities of a population of ten thousand or over each commissioner shall receive the sum of six hundred dollars (\$600) per annum, payable in equal monthly installments, except that the mayor shall receive a salary of twelve hundred dollars per annum (\$1,200), payable in equal monthly installments.

§ 13. Mayor and Commissioners to Give Bonds] That the mayor and each commissioner, before entering upon the duties of his office, shall give bond, payable to the city, in the sum of one thousand dollars in cities having a population of two thousand or less by the last preceding state or federal census, in the sum of two thousand five hundred dollars in cities having by such census a population of more than two thousand and less than ten thousand, and in the sum of five thousand dollars in cities of a population by said census of ten thousand or over, with two or more good and sufficient sureties, to be approved by the judge of the county court of the county in which the city is situated, and shall, in addition to the oath prescribed by the last section, also take an oath that he is not under direct or indirect

obligation to appoint or elect any person to any office, position or employment under the government of the city.

§ 14. The said board of commissioners, shall, by a majority vote of the members thereof, have the power to appoint all officers and subordinates in all the departments of said city.

§ 15. Members May be Removed—How] Any member of said board of commissioners may be removed at any time by the electors qualified to vote for his successor. The procedure to effect the removal of a member of the board of commissioners shall be as follows: A petition signed by the electors qualified to vote for a successor to the commissioner sought to be removed, equal in number to at least fifteen (15) per centum of the entire vote for candidates for commissioners cast at the last preceding general municipal election, demanding the election of a successor to the commissioner sought to be removed, shall be filed with the city auditor, provided that said petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number, and one of the signers of each paper shall make oath before an officer competent to administer oaths that the statements therein made are true, and that each signature to the paper appended is the genuine signature of the person whose name purports to be thereunto subscribed. Within ten days from the date of the filing of said petition the city auditor shall examine the same and ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the board of commissioners shall allow the auditor extra help for that purpose, and the auditor shall attach to said petition his certificate showing the result of such examination. If by the auditor's certificate the petition is shown to be insufficient it may be amended within ten days from the date of the attaching of said certificate to said petition. The auditor shall, within ten days after such examination, make like examination of the amended petition, and if his certificate shall show the same to be insufficient it shall be returned to the persons filing the same, without prejudice, however, to the filing of a new petition to the same effect, and if the petition shall be found sufficient the city auditor shall submit the same to the board of commissioners without delay. If the petition shall be found to be sufficient the board of commissioners shall order and fix a date for holding the city election, not less than thirty days nor more than forty days from the date of the auditor's certificate to the board of commissioners, that a sufficient petition is filed. The board of commissioners shall make, or cause to be made, publication of notice and all arrangements for holding the said election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other city elections. The successor of any commissioner so removed shall hold office during the un-

expired term of his predecessor. Any commissioner sought to be removed may be a candidate to succeed himself and, unless he requests otherwise in writing, the auditor shall place his name on the official ballot without nomination. In any such removal election the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receive the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon the qualification of his successor. If the incumbent receives the highest number of votes he shall continue in office and shall not be obliged to again qualify as commissioner, but in case some other person than the incumbent shall receive the highest number of votes he shall qualify within ten days after receiving notification of his election, and in case of his failure to qualify the office shall be deemed vacant. The provisions of this section shall also apply to directors of the board of education of the independent school district of said city and in such case the procedure herein prescribed shall be followed.

§ 16. Resignation—Vacancy] Resignation by the mayor any commissioner elected under this act shall be made in writing to the board of commissioners for their action thereupon. In case of the permanent removal of the mayor or any commissioner from the territorial limits of the city such removal shall ipso facto be deemed to create a vacancy in his office. In case of any vacancy from any cause in the office of mayor or any commissioner, the same shall be filled by election for the unexpired term to be held as soon as practicable after said vacancy occurs.

§ 17. May Administer Oath] The mayor and each commissioner and the city auditor each shall be, and they are, hereby authorized to administer oaths and the mayor is authorized to solemnize marriages.

§ 18. Powers and Duties of Board] Said board of commissioners so constituted shall have control and supervision over all the departments of said city, and to that end shall have power to make and enforce such rules and regulations as they may see fit and proper for and concerning the organization, management and operation of the departments of the city, and of whatever agencies may be created for the administration of its affairs. They shall, by a majority vote of all said commissioners, designate from among their members one commissioner who shall be known as the "Police and Fire Commissioner," and who shall have under his special charge the enforcement of all police regulations of said city and general supervision over the fire department thereof; and one commissioner to be known as the "Commissioner of Streets and Public Property," who shall have under his special charge the supervision of the streets and alleys, public grounds of said city, and be charged with the duty of lighting the streets and keeping the streets, alleys, public grounds and property in a clean and

sanitary condition, and with the enforcement of all rules and regulations necessary to these ends, and who shall also have under his special charge the supervision of all public improvements, except as herein otherwise provided, and shall see that all contracts therefor are faithfully complied with, and that the conditions of the grant of any franchise or privilege are faithfully complied with and performed; and one commissioner, to be known as the "Waterworks and Sewerage Commissioner," who shall have under his special charge the construction, maintenance and operation of the waterworks and sewer system and departments of said city, and shall see to the enforcement of all regulations with respect to said departments and with respect to the revenues pertaining thereto; and one commissioner who shall be known as the "Commissioner of Finance and Revenue," who shall have under his special charge the enforcement of all laws for the assessment and collection of taxes of every kind and the collection of all revenues belonging to said city from whatever source the same may be derived, and who shall also examine into and keep informed as to the finances of said city and as to the assets and property thereof.

§ 19. Mayor Shall be President of Board--Powers of] The mayor shall be president of the board of commissioners and shall be deemed to be a member thereof, and whenever in this act the term "board of commissioners" is used it shall be deemed to include the mayor. The mayor as president of the board of commissioners shall have the right to vote as a member thereof on all questions which may arise, but who shall not possess the power of veto. The board of commissioners shall have the power to summon and compel the attendance of witnesses, and the production of books and papers before them whenever it may be necessary for the more effective discharge of their duties, and shall have power to punish for contempt of said board with the same fines and penalties as the county judge may punish for contempt of the county court. All process necessary to enforce the powers conferred by this section shall be signed by the mayor and attested by the auditor, and shall be served by any member of the police force of said city, or by the sheriff of the county in which said city is situated.

§ 20. Executive Officer of City] The mayor shall be the executive officer of the city, and shall see that all the laws thereof are enforced. The commissioner named as the head of each department shall audit all accounts or claims against it, unless he be absent or fail or refuse to do so, in which event, the mayor shall appoint another commissioner to act in his stead during his absence or to audit such claims and accounts as the said commissioner shall fail or refuse to act upon; but before payment all accounts shall be acted upon and approved by at least two members of said board of commissioners.

§ 21. Special Police] Whenever the mayor shall deem it necessary in order to enforce the laws of the city, or to avert danger, or to

protect life or property, in case of a riot or any outbreak, or calamity or public disturbance, or when he has reason or fear any serious violation of law or order, or any outbreak, or any other danger to said city or the inhabitants thereof, he shall summon into service, as a special police force, all, or as many of the citizens as in his judgment and discretion may be necessary and proper; and summons may be by proclamation or order, addressed to the citizens generally, or those of any ward of the city or subdivision thereof, or such summons may be by personal notification; such special police, while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city; and any person so summoned, and failing to obey, or appearing and failing to perform any duty that may be required by this act, shall be fined in any sum not exceeding one hundred dollars (\$100.00).

§ 22. Acting President] In case the mayor is unable to perform the duties of his office by reason of temporary or continued absence or sickness, the said board shall appoint, and ballot, by a majority vote of all the members thereof, one of their number to act in his stead, whose official designation shall be "Acting President of the Board of Commissioners," and the commissioner so appointed shall be invested with all the powers, and shall perform all the duties of the mayor during such absence or sickness, and shall receive the salary of the mayor during such vacancy; provided, that it shall continue for ten days or longer, and during such absence in excess of ten days the mayor shall receive no salary; provided, further, that the commissioner receiving compensation as acting president shall not receive his salary as commissioner for the same time he receives compensation as acting president. In case of the death, permanent removal from the city, or resignation of the mayor the board of commissioners shall appoint, by a majority vote of all the members thereof, one of their number as acting president until the election of a mayor, as provided by this act.

§ 23. Qualification] No person shall be eligible to nomination or election as a member of the board of commissioners unless he shall be a citizen of the United States over the age of twenty-six years, a freeholder, and shall have been for at least five years prior to his election a resident of the city.

§ 24. May Remove Any Officer] The board of commissioners shall have the power, by a majority vote of all the members thereof, to remove from office any officer or employe of the city.

§ 25. Shall Have Power of Sheriffs to Keep Peace] Each member of the board of commissioners shall possess, within the corporate limits of the city and within one mile outside of the corporate limits, all powers conferred by law upon sheriffs to suppress disorder and keep the peace.

§ 26. May Release Person From Prison] The board of commissioners may, by a majority vote of all the members thereof, release any person in prison for violation of any city ordinance, or remit any fine or penalty for such violation.

§ 27. Each commissioner shall have the power at all times to examine and inspect the books, records and papers of any agent, employe or official of the city. The public shall have access thereto during business hours and under proper restrictions.

§ 28. Mayor May Call for Assistance in Enforcing Law] The mayor shall have power, when necessary, to call on every male inhabitant of the city over the age of eighteen years to aid in enforcing the laws and ordinances, and to call out the militia to aid in suppressing riots and other disorderly conduct, or carrying into effect any law or ordinance, subject to the authority of the governor as commander-in-chief of the militia.

§ 29. Omission of Duty—Penalty] In case the mayor or any member of the board of commissioners, or any other municipal officer, shall at any time be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, malconduct, or malfeasance in the discharge of the duties of his office, he shall be liable to indictment in any court of competent jurisdiction, and on conviction, shall be fined in a sum not exceeding one thousand dollars (\$1,000); and the court in which such conviction be had, shall enter an order removing such officer from office.

§ 30. No member of the board of commissioners shall, directly or indirectly, engage in any business transaction with the city whereby any money is to be paid, directly or indirectly, out of the city treasury to such member, or whereby such member may directly or indirectly receive any pecuniary benefit.

§ 31. Jurisdiction] The board of commissioners shall have jurisdiction in and over all places within one mile of the city limits, for the purpose of enforcing health and quarantine ordinances, and regulations thereof.

§ 32. Meetings of Board] The board of commissioners shall meet at least once every week in regular meeting at such time as shall be fixed by said board, at the city hall or other designated place in said city, to consider and take under advisement and act upon such business as may come before them. A majority of said board shall constitute a quorum for the transaction of all business, but no action of said commissioners shall be effective unless upon a vote of a majority of such quorum, and no final action shall be taken in any matter concerning the special department of any absent commissioner unless such business has been made a special order of the day, or such action is taken at a regular meeting of the board. Special meetings may be called by the mayor or by any two commissioners, at any time, to consider only such matters as shall be mentioned in the call for said

meeting, and written notice thereof shall be given to each member of said board then in the city. All sessions of said board, whether regular or called, shall be open to the public.

§ 33. A majority of the board of commissioners shall constitute a quorum to do business, but a smaller number may adjourn from time to time and may compel the attendance of absentees under such penalties as may be prescribed by ordinance.

§ 34. Journal of Proceedings Must be Kept] The board of commissioners shall keep a journal of its own proceedings. The yeas and nays shall be taken upon the passage of all ordinances, and for the passage of any ordinance it shall require the affirmative vote of a majority of all the commissioners elect, and the yeas and nays shall be taken upon any and all propositions to create any liability against the city, or for the expenditure or appropriation of its money and in all other cases at the request of any member, and shall be entered on the journal of its proceedings, and a concurrence of a majority of all the members of the board of commissioners shall be necessary to the passage of any such ordinance or proposition; provided, it shall require the affirmative vote of all the commissioners elected to sell any city property.

§ 35. Shall Designate Official Newspaper] The board of commissioners shall annually, at its first meeting in September, designate some newspaper published in the city, as the official newspaper of the city for the ensuing fiscal year, but may at any time thereafter, by a majority vote of all the members of the board, revoke such designation and make a new designation of an official newspaper for the balance of the fiscal year.

§ 36. Ordinances to Become Operative—When] All ordinances shall be read twice and there shall be at least one week intervening between the first and second reading, and after being passed by the board of commissioners, shall before taking effect, be deposited in the office of the city auditor, authenticated by the signatures of the mayor and of the auditor, and shall be published at least once in the official newspaper of the city. Excepting as hereinafter provided, all ordinances shall become operative immediately upon such publication. The auditor shall record in a book kept for that purpose, together with the affidavit of the publisher of the official newspaper of the publication thereof, all such ordinances so passed and published, and such book, or a certified copy of the ordinances so recorded, shall be received as evidence in all courts and places without further proof, or if printed in book or phamplet form by authority of the board of commissioners they shall be so received.

§ 37. Style of Ordinances] The style of all ordinances shall be "Be it Ordained by the Board of Commissioners of the City of" The said caption may be omitted when said ordinances

are published in book form or are compiled under the order of the board of commissioners.

§ 38. Ordinances May be Compiled] The board of commissioners may, not oftener than once in five years, compile, but not revise or amend, for publication in book form the ordinances of the city. Whenever such compilation shall be made, it shall not be necessary to publish the same in the official newspaper of the city.

§ 39. Laws, Ordinances Take Effect—When] No law, ordinance or resolution, passed by the board of commissioners thereof, (except such as are for the immediate preservation of the public peace, health, or safety, support of the city government and its existing public institutions), shall go into effect until twenty days after the passage and publication of such law, ordinance or resolution, if the same be one which by law must be published, and until twenty days after its passage if it be one which is not by law required to be published, and the words law, ordinance or resolution used in this article mean ordinances, resolves, orders, agreements, contracts, franchises and any measure which it is in the power of the board of commissioners of said city to enact.

§ 40. May be Submitted to Vote—Petition for] The qualified electors residing in the city, may within the said twenty days file a petition with the auditor thereof, requiring him to submit any such law, ordinance or resolution, to a vote of the electors of the city for its rejection or approval, at a special election to be held within thirty days immediately following the filing of said petition.

Provided, that in all cases where such petitions are filed at any time, not more than three months immediately prior to any election held for the purpose of electing the board of commissioners of said city, such law, ordinance or resolution shall be submitted at such election, provided such petitions are filed within sufficient time to give the notice above prescribed.

§ 41. Petition] If the matter intended to be covered by said petition is the whole of said law, ordinance or resolution, said petition shall contain the title of the said law, ordinance or resolution to be voted on by the electors, and the date of the passage of said law, ordinance or resolution by the board of commissioners, but if a portion of said law, ordinance or resolution is only intended to be covered by the said petition, then the said petition shall contain the title of said law, ordinance or resolution, the date of its passage, following which that portion of said law, ordinance or resolution intended to be covered by said petition, shall be set out at length, and said petition to be mandatory, shall be signed by at least five per centum of the legal voters residing in such city, the percentage to be based on the whole number of votes cast for the mayor, at the election immediately preceding the filing of said petition, which said petition shall conform substantially to the provisions of the preceding section and each elect-

or signing the same, shall after his name state his occupation, residence and post office address.

§ 42. Oath to Petition—Form of] An oath shall be made before a duly qualified officer by at least five voters signing said petition, or if more than one, each petition, to the effect that said petition is made in good faith, and that the affiant verily believes all the signatures to be genuine, and those of duly qualified voters, which said oath shall be substantially in the following form:

State of South Dakota

County of

} ss.

....., being duly sworn, on their oaths, respectively do say that the foregoing petition is made in good faith, and that they verily believe all the signatures thereto to be genuine, and those of duly qualified voters.

§ 43. Petition Must be Published] It shall be the duty of the auditor of the said city to cause the entire law, ordinance or resolution set forth in said petition to be advertised in the official newspaper of said city. If such newspaper be a daily newspaper the first publication shall be at least ten days prior to said election and publication shall also be made daily upon the four week days immediately preceding such election. If such newspaper be a weekly newspaper such publication shall be made for at least two successive weeks immediately preceding such election. Provided, that the publication of said law, ordinance or resolution in the said newspaper, shall contain a notification that on the day of election therein stated, the said law, ordinance or resolution will be submitted to the referendum, and if a portion of said law, ordinance or resolution only is covered by said petition, then a notification as to what particular portion of the said law, ordinance or resolution will be submitted to the said referendum.

§ 44. Auditor Must Provide Ballots] It shall be the duty of said auditor to have the ballots printed for the vote upon said law, ordinance or resolution, and cause the same to be distributed in the proper proportion in each voting precinct, in the city in the manner now provided for the distribution of ballots by the election laws of the state. Any or all questions shall be submitted on a separate ballot from those containing the names of the candidates for the office, and shall be submitted to the people in such form as will enable the electors to vote understandingly upon each question presented, and shall conform as near as may be to the manner employed to vote upon constitutional amendments. Provided, that all questions to be voted upon at the same election may be submitted upon the same ballot.

§ 45. Petition Must be Preserved] The auditor of the city shall preserve the original of all petitions filed in his office in voting the referendum for a period of at least two years from the date following

said petition, during which time said petition shall be open to public inspection upon reasonable request made.

§ 46. In Effect—When] Such law, ordinance or resolution, shall not go into effect unless approved by a majority of the votes cast for and against the same and shall go into effect immediately after the canvassing and determination of the election returns, if approved by the electors.

§ 47. Election—How Conducted] The appointment of judges and clerks, holding of election, and time of election, the canvassing, counting, returning and announcing of a referendary vote on any law, ordinance or resolution, and payment of election expenses shall be done in the manner already prescribed by law in the case of the officers of the city.

§ 48. Right to Propose Law—Percentage—How Based] The right to propose laws, ordinances or resolutions having the effect of law, for the government of the city shall rest with any five per centum of the electors of the city, the percentage in each instance to be based upon the number of votes cast at the last general election for mayor held previously to the proposal of the law in question.

§ 49. Proposal Made by Petition] A proposal for such law, ordinance or resolution shall be made by petition to the auditor of the city. The petition shall be signed by five per centum of the legal voters of the city, each elector stating his occupation, residence and post office address, and shall be filed with the auditor of the city after the manner prescribed by the provisions of this act for the petition of the referendum, and said petition shall contain in proper form the proposed law, ordinance or resolution.

§ 50. Referendum] When such petition is filed with the auditor, he shall at the first ensuing session or special session called, submit said proposal to the board of commissioners; and if the proposal is not adopted, or cannot be adopted by reason of want of authority by the board of commissioners, it shall be referred to a vote of the electors of the city within the time and manner prescribed by this act providing for the referendum.

§ 51. In Effect—When] Such law, ordinance or resolution shall go into effect if approved by a majority of the votes cast for and against the same.

§ 52. Right to Vote May be Challenged] The right of any person to vote at any election on any proposition submitted to the referendum or initiative, may be challenged in the same manner and for the same cause as by law provided in the case of challenging electors.

§ 53. Violation—Penalty] Any person, or persons, violating any of the provisions of this act or wilfully failing to execute any of the provisions of this act shall be guilty of a misdemeanor, and on conviction be fined not less than one hundred dollars nor more than five hundred dollars, or by imprisonment not less than thirty

days nor more than six months, in the county jail, or by both such fine and imprisonment, in the discretion of the court.

§ 54. Powers of Board of Commissioners] The board of commissioners shall have the following powers:

1. To control the finances and property of the corporation.
2. To appropriate money for corporate purposes only and provide for the payment of debts and expenses of the corporation; also to appropriate money to purchase, erect, lease, rent, equip, manage and maintain any system or part of system of lighting for the purpose of providing light, telephones, heat and power for municipal, industrial and domestic purposes and pass all ordinances, penal or otherwise, that shall be necessary for the full protection, maintenance, management, and control of the property so leased, purchased or erected.
3. To levy and collect taxes for general and special purposes on real and personal property.
4. To fix the amount, terms and manner of issuing and revoking licenses.
5. To borrow money on the credit of the corporation for corporate purposes, and issue bonds therefor, in such amounts and forms and on such conditions as it shall prescribe, but shall not become indebted in any manner or for any purpose to any amount, including existing indebtedness, in the aggregate to exceed five per centum on the value of the taxable property therein; to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness; and before or at the time of incurring indebtedness, shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years after contracting the same; provided no bonds shall be issued by said city council under the provisions of this section either for general or special purposes unless at an election after twenty days' notice in a newspaper published in the city stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of said city by a majority shall be determined in favor of issuing said bonds.
6. To issue bonds in place of, or to supply means to meet maturing bonds, or for the consolidation or funding the same.
7. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks and public grounds and vacate the same.
8. To plant trees on the same.
9. To regulate the use of the same.
10. To prevent and remove obstructions and encroachments upon the same.
11. To provide for the cleaning of the same.
12. To regulate the openings therein for the laying of gas or

water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas or electric lights.

13. To regulate and provide for lighting of streets, laying down gas pipes, and erection of lamp posts, electric towers and other apparatus, and to regulate the sale and use of gas and electric light, and to fix and determine the price of gas and electric light, and the rent of gas meters within the city, and regulate the inspection thereof, and to regulate telephone service, and the use of telephones within the city, and to fix and determine the charges for telephones and telephone service, and connections; and to prohibit or regulate the erection of poles for telegraph, telephone or electric wire in the public grounds, streets or alleys, and the placing of wire thereon; and to require the removal from the public grounds, streets or alleys of any or all such poles, and the removal and placing under ground of any or all telegraph, telephone or electric wires.

14. To provide for supplying the city and its inhabitants with water and gas, or either, or with other means of heat, illumination or power; and to acquire or construct and to lease or operate, and to regulate the construction or operation of conduits or of railroads, or other means or transit or transportation, and of plants and equipments for the production or transmission of gas, electricity, heat, refrigeration or power, in any of their forms, by pipes, wires or other means; and to incur a bonded indebtedness for any of such purposes, provided, the question of the issue of bonds therefor shall first be submitted to the electors of the city at a special or general election, and that three-fifths of the votes cast on the question of said issue of bonds shall have been cast in favor thereof.

15. To regulate the use of sidewalks and all structures thereunder; and to require the owner or occupant of any premises to keep the sidewalks in front of, or along the same, free from snow and other obstruction, and from weeds.

16. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage, or any offensive matter into any street, avenue, alley, public ground, or into any stream of water within the city limits or forming the boundary thereof, and to prevent injury to any street, avenue, alley or public ground.

17. To provide for and regulate crosswalks, curbs and gutters.

18. To regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign posts, awnings, telegraph or telephone poles, horse troughs, racks, posting hand bills and advertisements.

19. To regulate and prohibit the exhibition of or carrying of banners, placards, advertisements or hand bills in the streets or public grounds, or upon the sidewalks, and to regulate and prevent the flying of flags, banners or signs across the streets or from houses.

20. To regulate traffic and sales upon the streets, sidewalks and public places.

21. To regulate the speed of horses and other animals, vehicles, cars, and locomotives within the limits of the corporation.

22. To regulate the numbering of houses and lots.

23. To name and change the name of any street, avenue, alley or other public place.

24. To permit, regulate or prohibit the locating, constructing or laying a track of any railroad in any street, alley, or public place; but such permission shall not be for a longer time than twenty years, provided that this subdivision shall not modify or affect the powers granted by an act of the legislature passed at its tenth session entitled "An act to Amend Subdivision 24 of Section 1229 of the Revised Code of 1903 as Amended by Chapter 221 of the Session Laws of 1903 Relating to Powers of City Councils," which act was approved February 8th, 1907.

25. To provide for and change the location, grade and crossing of any railroad.

26. To require railroad companies to fence their respective railroads, or any portion of the same, and construct cattle guards, crossings of streets and public roads, and viaduct or overhead crossings, and keep the same in repair within the limits of the city. And also to require any railroad company to construct a viaduct along any street or highway and over the track of such railroad company, and in case the board of commissioners constructs such viaduct said board of commissioners is hereby authorized and empowered to assess the cost, or its proportionate amount of the cost, of such viaduct to such railroad company or companies; and upon a failure of such company or companies to pay such assessment within thirty days after having been notified thereof by the city treasurer of such city, then the city treasurer of such city is authorized to recover the amount of such assessment from such railroad company or companies in a civil action.

27. To require railroad companies to keep flagmen and maintain lights at railroad crossings of streets, and provide protection against injury to persons and property; to compel such railroad to raise or lower their railroad tracks, to conform to any grade which may, at any time be established by such city, and where such tracks run lengthwise of any such streets, alley, or highway, to keep their railroad tracks on a level with the street surface, and so that such tracks may be crossed at any place on such street, alley or highway; to compel and require railroad companies to make and keep open, and keep in repair, ditches, drains, sewers and culverts along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or right of way, and so that the natural or artificial drainage of adjacent property shall not be impeded.

28. To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.

29. To construct and keep in repair culverts, drains, sewers,

catch basins, man-holes and cess pools, and to regulate the use thereof.

30. To license, tax, regulate, suppress, and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, ticket scalpers, and employment agencies, and to regulate or license the manufacture and sale of cigars, tobacco, cigarettes, snuff, soda water, mineral water, and all light drinks of every kind, the manufacture and sale of which is not prohibited by the laws of the state.

31. To license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, watermen, and all others pursuing like occupations, and to prescribe their compensation.

32. To license, regulate, tax and restrain runners for stages, cars, public houses, or other things or persons.

33. To license, regulate, tax or prohibit and suppress billiards, bagatelle, pigeon hole or any other tables or implements kept or used for a similar purpose in any public resort, pin-alleys and ball-alleys.

34. To suppress bawdy or disorderly houses, houses of ill fame or assignation within the limits of the city and within one mile of the outer boundaries of the same, and also to suppress gaming and gambling houses, lotteries and all fraudulent devices and practices for the purpose of gambling or obtaining money or property and for such purpose may enter any building, room, tent, booth or shanty or other place where roulette, faro, keno or gift enterprises by whatever name it may be called, or gambling device, or game of chance is practiced, or allowed to be practiced and carried on within the limits of the city and within one mile of the outer boundaries of the same; and to seize and destroy any keno table, faro table, faro bank, shuffle board, bagatelle, playing cards, pigeon hole, roulette or any other instrument, device or thing used for gambling, found in any of said places; and to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations; and the provisions of this subdivision, and the powers herein granted shall extend to all cities in this state, whether incorporated under a special charter or the general laws.

35. To establish markets and market houses, and to provide for the regulation and use thereof.

36. To provide for place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables, and all other provisions, and regulate the selling of the same.

37. To regulate the sale of bread in the city and prescribe the weight and quality of the bread in the loaf.

38. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meal and other provisions.

39. To regulate the inspection, weighing and measuring of lumber, firewood, coal, hay, and any article of merchandise.

40. To provide for the inspection and sealing of weights and measures.

41. To enforce the keeping of proper weights and measures by vendors.

42. To regulate the construction, repairs and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

43. To construct and maintain waterworks and make all the needful rules and regulations concerning the distribution and use of water supplied by such waterworks.

44. To purchase, condemn, hold and improve public parks within or without the limits of the city, and provide for the protection, improvement and preservation of the same.

45. To appropriate, damage, take and condemn any property of any corporation or person for the purpose of establishing, changing, opening, widening, extending or grading any public street or alley.

46. To regulate and inspect places of amusement and to require the owners, lessees and managers of opera houses, theaters and other places of amusement to provide asbestos stage curtains and sufficient and proper aisles, avenues and exits for escape in case of fire.

47. To prevent intoxication, fighting, quarreling, dog fights, cock fights and all disorderly conduct.

48. To regulate partition fences and party walls.

49. To prescribe the thickness, strength and manner of constructing stone, brick and other buildings, and construction of fire escapes therein.

50. To prescribe the limits within which wooden buildings shall not be erected or placed or repaired without permission, and to direct that all and any buildings within said limits (which shall be known as the fire limits), when the same shall have been damaged by fire, decay or otherwise, to the extent of fifty per cent of the value shall be torn down or removed, and to prescribe the manner of ascertaining such damage.

51. To prevent dangerous construction and condition of chimneys, fire places, hearths, stoves, stove pipes, ovens, boilers, and apparatus used in and about any building and manufactory, and to cause the same to be removed or placed in a safe condition where considered dangerous; to regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and cause all such buildings and enclosures as may be in a dangerous state to be put in a safe condition.

52. To erect engine houses and provide fire engines, hose carts, hooks and ladders and other implements for prevention and extinguishment of fires, and provide for the use and management of the same by voluntary or paid fire companies or otherwise.

53. To regulate and prevent the storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glyce-

rine, petroleum, or any of the products thereof, and other combustible or explosive material, and the use of lights in stables, shops and other places, and the building of bonfires, also to regulate and restrain the use of fireworks, fire crackers, torpedoes, roman candles, skyrockets, and other pyrotechnic displays.

54. To provide for the inspection of steam boilers.

55. To establish and erect a city jail, house of correction, and workhouse for the confinement and reformation of disorderly persons, vagrants, tramps, and idle persons, and persons convicted of violating any city ordinance, and make rules and regulations for the government of the same, and appoint necessary jailers and keepers.

56. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the county board of commissioners, and to regulate the police of the city, and pass and enforce all necessary police ordinances.

57. To prevent and suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place.

58. To prohibit and punish cruelty to animals.

59. To restrain and punish vagrants, mendicants and prostitutes.

60. To declare what shall be a nuisance, and to abate the same and impose fines upon parties who may create, continue or suffer nuisances to exist.

61. To appoint a board of health and prescribe its powers and duties.

62. To erect and establish hospitals, and medical dispensaries, and to control and regulate the same.

63. To do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

64. To establish and regulate cemeteries within or without the corporation, and acquire lands therefor by purchase or otherwise, and cause cemeteries to be removed and prohibit their establishment within one mile of the corporation.

65. To regulate, restrain and prohibit the running at large of horses, cattle, swine, sheep, goats, geese, and dogs, and to impose a tax or license on dogs.

66. To direct the location and regulate the management and construction of packing houses, renderies, bone factories, slaughter houses, soap factories, foundries, breweries, distilleries, livery stables, and blacksmith shops, within, or within one mile of the limits of the corporation.

67. To prohibit any offensive or unwholesome business, or establishment or any abattoir within, or within one mile of the limits of the corporation.

68. To compel the owner of any grocery, cellar, stable, pig sty,

privy, sewer, cess pool or other unwholesome or nauseous house, or place, to cleanse, abate, or remove the same, and to regulate the location thereof.

69. To provide for the taking of the city census; but no city census shall be taken oftener than once in three years.

70. To provide for the erection and care of all public buildings necessary for the use of the city.

71. The board of commissioners shall have power by condemnation, or otherwise, to extend any street, alley or highway over or across, or to construct any sewer under or through any railroad track, right of way, or land of any railroad company (within the corporate limits), but where no compensation is made to such railroad company, the city shall restore such railroad track, right of way or land to its former state, or in a sufficient manner not to have impaired its usefulness.

72. To prevent and regulate the rolling of hoops, playing of ball, flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the street or on the sidewalks, or to frighten teams and horses.

73. To regulate and prohibit the keeping of any lumber yard, and the placing or piling or selling any lumber, timber, wood, or other combustible material within the fire limits of the city.

74. To provide by ordinance that all the paper, printing, stationery, blanks, fuel, and all the supplies needed for the use of the city shall be furnished by contract let to the lowest responsible bidder.

75. To tax, license and regulate second-hand and junk stores, and to forbid the purchasing and receiving from minors without the written consent of their parents or guardians any article whatever, and to prescribe punishment for any violation hereof.

76. To purchase, erect, lease, rent, manage and maintain any system or part of system or waterworks, hydrants, and supply of water; telegraph fire signal or fire apparatus that may be of use in the prevention or extinguishment of fires, and to pass all ordinances, penal or otherwise, that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected.

77. To redistrict the city into wards, and describe the boundaries thereof. The redistricting shall be done by ordinance and the wards made as nearly equal in population as possible, and of contiguous territory. No ward in a city having a population of ten thousand or over by the last preceding federal or state census shall contain less than three hundred (300) nor more than five hundred (500) legal voters.

78. To pass all ordinances, rules, and make all regulations proper or necessary to carry into effect the powers granted to the cities, with such fines or penalties as the board of commissioners

shall deem proper; provided, no fine or penalty shall exceed one hundred (100) dollars, and no imprisonment shall exceed three months for one offense.

79. To regulate in such manner as may not be inconsistent with the laws of this state, the sale of spirituous, vinous, fermented, or other intoxicating liquors at retail, and to revoke licenses granted for the sale of such liquors for the violation of the provisions of any state law, or of any city ordinances, and to establish districts within which licenses may be granted for the sale of such intoxicating liquors at retail.

80. To acquire by purchase, condemnation, or other lawful means, property, both real and personal, within or without the corporate limits, necessary or convenient for municipal purposes, or for the exercise of the powers granted to said corporation.

81. It shall be the duty of the city council to tax, license and regulate transient merchants, auctioneers, transient bankrupt and auction stores, and all stores of like nature, also gift enterprises and every business or avocation of a like character. Provided, this shall not be construed to apply to any person retailing the productions which can be shown to be his or her manufacture or production.

82. To construct and maintain sewer pipes through and upon private property, or in or along any stream of water, or to empty or discharge the sewerage of the city or any part thereof into any stream of water within or without the limits of the city, and for that purpose may condemn private property when necessary. Provided, that sewerage so emptied into any stream of water shall be so disposed of and managed as not to create any foul or noxious odors in the air over or along such stream.

§ 55. Actions—How Brought] All actions brought to recover any fine or to enforce any penalty under any ordinance of the city, shall be brought in the corporate name of the city as plaintiff; and no prosecution, recovery or acquittal, for the violation of any such ordinance, shall constitute a defense to any other prosecution of the same party for any other violation of any such ordinance, although the different causes of action existed at the same time, and if united would not have exceeded the jurisdiction of the court or justice of the peace.

§ 56. Moneys Collected Must be Paid Into Treasury] All fines and forfeitures for the violation of ordinances, when collected, and all moneys collected for license or otherwise, shall be paid into the treasury of the corporation at such times and in such manner as may be prescribed by ordinance.

§ 57. Actions for Violation of Ordinances] In all actions for the violation of any ordinance, the first process shall be a summons. Provided, however, that a warrant for the arrest of the offender may issue in the first instance upon the affidavit of any person that any

such ordinance has been violated; and that the person making the complaint has reasonable grounds to believe that the party charged is guilty thereof; and any person arrested upon any such warrant shall without any unnecessary delay, be taken before the proper officer to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed may upon order of the court before whom the conviction is had, be committed to the county jail, city prison, work house, house of correction or other place provided by the city for the incarceration of offenders, until such fine, penalty and costs shall be fully paid. Provided, that no such imprisonment shall exceed three months for any one offense. The board of commissioners shall have power to provide by ordinance that every person so committed shall be required to work for the corporation at such labor as his or her strength will permit, not exceeding ten hours each working day; and for such work the person so employed to be allowed, exclusive of his or her board, one dollar and twenty-five cents for each day's work, on account of such fine and costs.

§ 58. Process—By Whom Served] Any constable or sheriff in the county may serve any process or make any arrests authorized to be made by any city officer.

§ 59. There shall be appointed by the vote of a majority of the board of commissioners a city treasurer, a city assessor, a city auditor, a police justice, a city justice of the peace, a city attorney, a city engineer, and such other officers as may by the board of commissioners be deemed necessary and expedient. Provided, however, that no police justice or city justice of the peace shall be appointed after the legislature shall, by general law, have provided for the establishment of a municipal court.

§ 60. Appointive Officers] The appointive officers of a city under this act shall be appointed as soon as practicable after the first Monday in May in each year and hold their respective offices for one year and until their successors are appointed and qualified, unless sooner removed by the vote of a majority of the board of commissioners. Upon such removal the board of commissioners may take immediate charge of the books, records and affairs of said office and upon refusal to deliver said books, records and affairs to said board, the officer so removed shall be liable for all damages caused by such refusal and to such penalty as may by ordinance be prescribed.

§ 61. Appointed Officers—Oath of] All appointed officers of a city organized under this act, shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of South Dakota, and that I will faithfully discharge the duties of the office of according to the best of my ability." Which oath or affirmation so subscribed shall be filed in the

office of the city auditor; and all such officers, shall, before entering upon the duties of their respective offices, execute a bond with security, to be approved by the board of commissioners, payable to the city, in such penal sum as may by resolution or ordinance be directed, conditioned for the faithful performance of the duties of the office and the payment of all money received by such officer, according to law and the ordinance of such city. Provided, however, that in no case shall the treasurer's bond be fixed at a less sum than the amount of the estimated tax for the current year, which bonds shall be filed with the city auditor (except the bond of the city auditor, which shall be filed with the treasurer).

§ 62. Officer Must Turn Over to Successor All Property, Books and Effects] Any person having been an officer of the city shall, within three days after notification and request, deliver to his successor in office all property, books and effects, of every description in his possession, belonging to the city or appertaining to his said office; and upon his refusal to do so, shall be liable for all the damages caused thereby and to such penalty as may by ordinance be prescribed.

§ 63. Qualification of Appointees] No person shall be eligible to any appointive office who is not a qualified elector of the city, and who shall not have resided therein at least nine months next preceding his appointment; nor shall any person be eligible to any office who is a defaulter to the corporation. Provided, that the city engineer need not be at the time of his appointment a qualified elector of or resident of the city.

§ 64. Must Not be Interested in Any Contract] No officer shall be directly or indirectly interested in any contract, work or business of the city, or the sale of any article, the expense, price or consideration of which is paid from the treasury, or by any assessment levied by any act or ordinance; nor in the purchase of any real estate or other property belonging to the corporation, or which shall be sold for taxes or assessment, or by virtue of legal process at the suit of said corporation.

§ 65. Cannot Hold More than One Office] No mayor, commissioner, city auditor or treasurer, shall hold any other office under the city government during his term of office.

§ 66. Office of Auditor—Where Kept—Duties of Auditor] The city auditor shall keep his office at the place of meeting of the board of commissioners, or some other place convenient thereto, as the board may direct; he shall keep the corporate seal, and all the papers and records of the city, and keep a record of the proceedings of the board of commissioners, whose meeting it shall be his duty to attend. Copies of all papers filed in his office, and transcripts from all records of the board of commissioners, certified by him under the corporate seal, shall be evidence in all courts the same as if the original were produced. He shall draw and countersign all orders on the city treasurer in pur-

suance of any order or resolution of the board of commissioners, and keep a full and accurate account thereof in books provided for that purpose.

§ 67. Auditor Must Make Report] The city auditor shall report to the board of commissioners on the first days of March and September of each year the receipts and expenses and financial condition of the city, which report shall be published within thirty days thereafter in the official paper of the city, or such other paper as the commissioners may direct. He shall make and keep a list of outstanding city bonds, to whom issued, for what purpose, when and where payable, and the rate of interest they respectively bear, and recommend such action to the board of commissioners as will secure the punctual payment of the principal and interest of such bonds. He shall report annually, on or before the first day of September, to the board of commissioners an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year.

§ 68. Further Duties of Auditor] He shall make, or cause to be made, estimates of the expenses of any work to be done by the city, countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the board of commissioners or by any city officer. And every contract made in behalf of the city, or to which the city is a party, shall be void unless signed by the auditor. The city auditor shall keep regular books of account in which he shall enter all indebtedness of the city, and which at all times show the financial condition of the city, the amount of bonds, orders, certificates, or other evidences of indebtedness, issued by the board of commissioners; the amount of all bonds, orders, certificates, or other evidences of indebtedness, which have been redeemed, and the amount of each outstanding; to countersign all bonds, orders, or other evidences of indebtedness of the city, and to keep accurate accounts thereof, stating to whom and for what purpose issued, and the amount thereof; to keep account with all receiving and disbursing officers of the city, showing the amount they have received from the different sources of revenue, and the amount which they have disbursed under the direction of the board of commissioners. He shall keep a list of all certificates issued for work or any other purpose, and before the levy of the board of commissioners of any special tax upon the property in the city, or any part thereof, shall report to the board of commissioners a schedule of all parcels, lots, or parcels of lands, which may be subject to the proposed special tax or assessment, and also the amount of such special tax or assessment which it may be necessary to levy on such lots or parcels of lands; which said schedule shall be certified by the affidavit of the auditor, and shall be prima facie evidence of the facts stated therein in all cases wherein the validity of such special tax or assessment shall come in question. The board of commissioners shall, if from such reports they deem such special tax or assess-

ment legal and just, cause the same to be levied in pursuance of the provisions of this chapter. The auditor shall examine all reports, books, papers, vouchers and accounts of the city treasurer, and from time to time perform such other duties as the board of commissioners may direct. All claims and demands against the city, before they are allowed by the board of commissioners, shall be audited and adjusted by the auditor, and he shall keep a record of his acts and doings, and keep a book in which he shall enter all contracts, with an index thereto; such books shall be open to the inspection of all parties interested.

§ 69. City Attorney, Duties of] The city attorney shall perform all professional services incident to his office, and when required shall furnish opinion upon any subject submitted to him by the board of commissioners or its members.

§ 70. City Treasurer—Duties of] The city treasurer shall receive all moneys belonging to the city, including all taxes, license moneys, and fines, and all income from all other sources; and collect all special assessments as hereinafter provided, and keep accurate and detailed account thereof in such manner as provided in this act, or as the board of commissioners may from time to time direct. He shall have a settlement with the auditor at the end of every month, and turn over all warrants, interest coupons, bonds or other evidence of indebtedness of the city which may have been redeemed by him during the month, taking the receipt of the auditor therefor, and all such warrants, orders or other evidences of indebtedness shall be canceled by him and have written or stamped thereon the date of their payment or redemption.

§ 71. Moneys—How Paid Out] Unless otherwise ordered by the board of commissioners or provided for in this act, no moneys shall be paid out of the treasury except upon the warrant of the mayor, countersigned by the auditor, except bonds and interest coupons, which when due may be paid upon presentation, or in case the same are payable at some other place than the city organized under this chapter, then the money for their redemption shall be sent to the place where they are payable in time to meet such payment when due.

§ 72. Warrants—How Paid] All warrants shall be paid in the order in which they are presented, out of the moneys in the respective funds upon which they may be drawn, and the treasurer shall note on the back of each warrant presented to him the date of such presentation, and when payment is made, the date of such payment. Provided, that any warrant shall be paid by the treasurer in case a sufficient amount of money shall remain in the treasury to the credit of the fund upon which such warrant may be drawn, to pay all warrants drawn upon such fund and presented previous to such warrant. Any violation of the provisions of this section on the part of the treasurer shall constitute grounds for his removal from office.

§ 73. Treasurer to Keep Separate Accounts] The treasurer

shall keep a separate account of each fund or appropriation, and of the debts and credits belonging thereto.

§ 74. Receipts] The treasurer shall give every person paying into the city treasury a duplicate receipt therefor, specifying the date of payment and upon what account paid; and he shall also file copies of such receipts with the auditor at the date of his monthly report.

§ 75. Treasurer Must Keep Money Separate From His Own] The treasurer shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys; and he is expressly prohibited from using, either directly or indirectly, the corporate money or warrants in his custody, and keeping for his own use and benefit, or that of any other person or persons whomsoever; and any violation of this provision shall subject him to an immediate removal from office.

§ 76. Treasurer to Make Report] The treasurer shall report to the board of commissioners at such time as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures during and since his last report, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid and person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee of the board, at the time of making such report.

§ 77. Special Fund] All moneys received on any special assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made; and said money shall be used for no other purpose whatever.

§ 78. Salaries of City Officers, by Whom Fixed] The board of commissioners shall by ordinance fix and determine the amount of the salaries and compensation of all city officials, and the time the same shall be paid.

§ 79. City Assessor—Duties of] The city assessor shall perform all the duties in relation to the assessing of property for the purpose of levying all city, county, school and state taxes. Upon the completion of the assessment roll, he shall return the same to the city auditor, who shall lay the same before the board of review or equalization at its regular meeting. It shall be the duty of the city assessor to prepare and keep in his office for the use of himself and his successor in office, in such form as he shall determine, all such information in regard to the real and personal property within the city as shall be useful and necessary in determining the value of the same for the purpose of the assessment in order to effect as near as may be a just and uniform basis and rate of assessment and valuation. He shall render such assistance to the city engineer and the board of commissioners as they may require in the making of special assessments for

municipal improvements, and perform such other duties as may be prescribed by the board of commissioners.

§ 80. Assessors—How Governed] The assessor shall be governed by the same laws and regulations as county and township assessors and shall return his assessment roll on or before the second Tuesday in June in each year. Said assessment roll shall be open to the inspection of all persons interested until the meeting of the board of equalization.

§ 81. Board of Equalization—Of Whom Composed—Meeting of] The board of equalization shall be composed of the mayor and commissioners, and shall meet on the fourth Monday of June in each year. The city auditor shall keep an accurate record of all changes made in the valuation of property, and of all other proceedings. The board of equalization may adjourn from day to day until its work is completed, and a majority of the full board shall constitute a quorum to transact business. If no quorum is present the auditor may adjourn the board from day to day and publicly announce the time to which the meeting is adjourned.

§ 82. Board to Equalize and Correct Assessment Roll] The board of equalization shall meet at the time fixed in this act at the place of meeting of the board of commissioners, and shall proceed to equalize and correct such assessment roll. They may change the valuation and assessment of any real or personal property upon the roll, by increasing or diminishing the assessed valuation thereof, as shall be reasonable and just, to render taxation uniform. Provided, that the valuation of any real or personal property, as returned by the assessor, shall not be increased without first giving the owner or his agent notice of the intention of the board to so increase it. Such notice shall be by personal notice served upon the owner or agent, or by leaving a copy at his place of business or last place of residence, and shall state the time when the board will be in session to act upon the matter.

§ 83. Duties of Board of Equalization] The board of equalization must place upon and add to the assessment roll any property, real or personal, subject to taxation, which has been omitted therefrom by the owner or by the assessor, and enter the same at a valuation so that it will bear an equal and just proportion of taxation. During the session of said board any person, or his attorney or agent, feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of alleged errors in the listing or valuation of his property, whether real or personal, and the board may correct the same as they may deem just; or if the board have reason to believe that any person has failed to return to the assessor all personal property required by law to be returned, or if any person refuse to swear to the returns so made, the board shall notify the person who has so failed to make return, or refused to swear to the return, in the

same manner as prescribed in the preceding section of this act, and may examine such person on oath in regard to such property, or if he refuses to appear they may fix such valuation at a sum which they shall deem just. Any person feeling aggrieved at any decision of the board of equalization upon any matter that he has called upon it to correct, alter or change in reference to the listing or valuation of his own property, may appeal to the circuit court in the county where the property is situated.

§ 84. Assessment Sent to County Auditor] Within ten days after the completion of the equalization of the assessment as herein provided, the city auditor shall deliver the same to the county auditor of the county in which such city is situated, with the certificate that the same is correct as equalized by the board of equalization, and the same shall be accepted by the board of county commissioners of such county in lieu of all other assessment rolls for said property in said city subject to equalization.

§ 85. Taxes—How Collected] The county treasurer of such county shall collect and enforce the collection of the city and school tax with and in the same manner as other taxes, and shall pay over to the city and school district treasurers respectively, on the first of every month, on demand and without deduction of fees or commissions for collection, all such taxes so collected during the preceding month, and shall forthwith notify the city auditor of the amount so paid over for city purposes and the clerk of the board of education of the amount so paid over for school purposes: Provided, that in cities having a population of ten thousand or over by the last preceding federal or state census both city and school taxes shall be paid by the county treasurer to the city treasurer. The county treasurer shall include in the amounts so paid over, all moneys collected for interest or penalties upon taxes levied for city or school purposes. He shall take duplicate receipts for all such amounts so paid to the city and school treasurers, one of which receipts shall be forthwith delivered to the city auditor and to the clerk of the board of education respectively.

§ 86. Apportionment] The city treasurer and auditor and the school treasurer and clerk of the board of education shall respectively apportion said amounts so received by the city and school treasurers, and credit each fund with its proportion or share according to the levies made by the city board of commissioners and by the board of education, and the county treasurer at the time of paying over such funds shall furnish the city treasurer and auditor and the school treasurer and clerk of the board of education with a statement of the amount collected for each year separately.

§ 87. Jurisdiction of Police Justice] The police justice of the peace shall have concurrent jurisdiction with that of the city justice of the peace to hear, try and determine offenses against the ordinances of the city; and he shall have concurrent jurisdiction with other jus-

tices of the peace in the county in all other cases, civil and criminal. Provided, that all fines, penalties and forfeitures for the violation of any city ordinances, when tried before the police or city justice shall, when collected, be paid by the officer receiving the same to the city treasurer of such city.

§ 88. Warrant of Arrest] Whenever complaint shall be made to the police justice upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which the police justice has jurisdiction, such justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the chief of police or the sheriff or any constable of the county, or some person especially appointed by said justice for such purpose.

§ 89. Hearing] When any person shall be brought before the said justice upon such warrant it shall be his duty to hear and determine the complaint alleged against the defendant.

§ 90. Trial May be Postponed] Upon good cause such justice may postpone trial of the case to a day certain, in which case he shall require the defendant to enter into recognizance with sufficient surety, conditioned that he will appear before such justice at the time and place appointed and then and there answer the complaint alleged against him.

§ 91. Summons of Witnesses] It shall be the duty of such justice to summons all persons whose testimony may be deemed material as witnesses on the trial and enforce their attendance by attachment if necessary; and when a trial shall be continued by said justice he may verbally notify such witnesses as may be present at the continuance to attend before him to testify in the cause set for trial; and such verbal notice shall be valid as a summons.

§ 92. Trials—How Governed] All trials before the said justice for misdemeanors arising under the laws of this state shall be governed by the criminal procedure applicable to justices' courts in like cases.

§ 93. Judgment] In all trials for offenses under the ordinances of said city, if the defendant is found guilty, said justice shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until such judgment be complied with; in no case to exceed one day for every one dollar and twenty-five cents fine and costs assessed against said defendant.

§ 94. Court—When Open] Said justice shall be conservator of the peace, and his court shall be open every day except Sunday to hear and determine any and all cases cognizable before him; and shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday except to receive complaints, issue process, and take bail, and receive verdicts.

§ 95. Appeals May be Taken] In all cases before the said jus-

tice, arising under the ordinances of the city, an appeal may be taken by the defendant to the circuit court of the county, as in other appeals from justice court, but no appeal shall be allowed unless such defendant shall, in case of fine within ten days, in case of imprisonment within twenty-four hours, enter into recognizance with sufficient surety to be approved by said justice, conditioned in case of fine for the payment of said fine and costs, and costs of appeal, and in case of judgment of imprisonment that he will render himself in execution thereof if it should be determined against the appellant.

§ 96. Conviction—Penalty] Any person convicted before the said justice of an offense under the ordinances of the city, shall be punished by fine and imprisonment, as may be regulated by ordinances, and under no circumstances shall such justice remit fines or penalties or payment of costs or otherwise.

§ 97. City Justice—Jurisdiction] The city justice of the peace shall have concurrent jurisdiction with that of the police justice of the peace to hear, try and determine offenses against the ordinances of the city with the same power and authority as is possessed by the police justice of the peace in reference thereto, and the practice, procedure, and duties of the city justice of the peace shall be the same as is possessed by the police justice of the peace. The city justice of the peace shall also have the same jurisdiction as justices of the peace within the county in which the city is situated, in all civil and criminal cases, and within the jurisdiction hereby conferred the power of said court as a committing magistrate and in the trial of cases, shall be the same as is provided by the laws of the state for justices of the peace, and the process and proceeding of said court shall be governed by the laws regulating proceedings in justices' courts, and in all cases of trial in said court an appeal may be taken to the circuit court for said county in the same manner and upon the same condition as provided by the laws of the state in cases of appeal from justices of the peace, and on such appeal the circuit court shall have the power as provided by law.

§ 98. Vacancy—How Filled] In case of vacancy of the office of police justice of the peace by death, or resignation, or otherwise, the board of commissioners shall fill such vacancy, and in case of temporary absence, interest or disability to perform his duties, it shall be the duty of the city justice of the peace to act as police justice during such vacancy, absence or disability in the trial of cases cognizable before said police justice.

§ 99. Judgment for Costs] If upon any trial under the provisions of this act, it shall appear to the satisfaction of the police justice or city justice, or the jury, in cases arising under the laws of the state, that the prosecution was commenced without probable cause, or from malicious motives, the jury or justice trying the case shall state the name of the complaining witness in the findings, and shall impose

the costs of the prosecution upon him and judgment shall be rendered against such complaining witness that he pay such costs, and stand committed until the same are paid.

§ 100. Powers and Duties of Justices] The police justice and the city justice of the peace shall have power to enforce due obedience to all orders, rules, judgments, and decrees made by them, and they may fine or imprison for contempt offered to them while holding their court, or to process issued or orders made by them in the same manner and to the same extent as provided for justices' courts. On the trial of any cases in said courts it shall be the duty of the police or city justice to sign any bill of exceptions rendered to the court during process of such trial; provided, that the truth of the matter be fairly stated, and thereupon exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the appellate court on appeal, and proceedings may be stayed as may be deemed reasonable, and the appellate court shall in such proceedings take judicial notice of all the ordinances of said city. Cases before the police justice arising under the city ordinances shall be tried and determined by the justice without the intervention of a jury, except in cases where, under the provisions of the ordinances of the city imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be twenty dollars or over, and the defendant shall demand a trial by jury before the commencement of such trial; and when a demand shall be so made it shall be the duty of said justice to write down the names of twelve persons, residents of the city and having the qualifications of jurors in the circuit court, and the defendant and the attorney for the city shall each strike off three names; or in case the defendant shall neglect so to do then the justice, with the attorney for the city, shall strike off the names, and the said justice shall at once issue his venire to the chief of police commanding him to summon the six persons whose names remain upon the list as jurors; and in all trials by jury in said court, challenges shall be allowed in the same manner and for the same causes as in the circuit court, in cases of misdemeanor, and in case the number shall be reduced below six by such challenges, or a portion of said number shall fail to attend, then the chief of police shall summon in a sufficient number of talesman, having the qualifications of jurors, to complete the panel, which shall in all cases consist of six jurors. If either party objects to the competency of a juror, the question thereon must be tried in a summary manner by the said justice, who may examine the juror or other witnesses under oath. Each and every person summoned as a juror in any case shall be entitled to a fee of one dollar for each day and in case of conviction such fee shall be taxed against the defendant as a part of the costs of the case. In all cases not herein specially provided for process and proceedings

of said court shall be governed by the laws regulating proceedings in justices' courts in criminal cases. The police justice shall be in attendance at his office for the transaction of business at such reasonable hours as the board of commissioners may prescribe, and complaints may be made to and writs and process issued by them at all times in court or otherwise.

§ 101. City Engineer] The city engineer shall be a practical engineer and surveyor. He shall keep his office in some convenient place in such city, and the board shall by ordinance prescribe his duties and fix his compensation for services performed for the city. All surveys, profiles, plans, or estimates made by him for the city shall be the property of the city, and shall be carefully preserved in the office of the engineer, open to the inspection of all persons interested; and the same, together with all books and papers appertaining to said office shall be delivered over by the engineer at the expiration of his term of office, to his successor or the board of commissioners.

§ 102. Chief of Police, Powers and Duties of] The chief of police shall perform such duties as shall be prescribed by the board of commissioners for the preservation of the peace. All police officers and watchmen of any city shall possess within the city limits the power of constables by the laws of this state, and it shall be their duty to execute and serve all warrants, process, commitments and all writs whatsoever issued by the police and city justice of the peace, for any violation of the laws of the state of South Dakota, or of the ordinances of said city, or any provisions of this act; and also all writs and process whatsoever issued by the police or city justice in civil actions; and they shall have authority to pursue and arrest any person fleeing from justice, in any part of the state, and when performing the duties aforesaid shall be entitled to the same fees as constables for like service. Watchmen shall have the authority to arrest and detain any person guilty of any breach of the peace or any violation of the laws of the state or of the ordinances of the city, and for these purposes shall possess the powers of constables under the laws of this state, while on duty.

§ 103. Warrants] All warrants issued by the police or city justice for the violation of any general law of this state shall run to the sheriff or any constable of the county, or to the chief of police or any policeman of the city; but no chief of police or policeman, where he goes outside of the city to make arrests, shall receive any fees therefor unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy, or constable, to make the arrest might endanger an escape.

§ 104. Annual Election] There shall be an annual election for electing mayor and commissioners and directors of the board of education of the independent school district held on the third Tuesday of April of each year, at such place in each ward as the board of

commissioners shall designate, and the polls shall be kept open continuously from eight o'clock in the forenoon until five o'clock in the afternoon and no longer; and ten days previous notice shall be given by the board of commissioners of the time and place of holding such election by publication in at least two of the city newspapers published in said city, if two such papers shall be published therein. At such election a successor to the mayor or commissioner whose term of office expires shall be elected, and in case of a vacancy or vacancies to be filled at such time, a successor to the office so vacant. In such case, however, there shall be designated in the petition for nomination and upon the ballots which of them is to be elected for the full term of five years and which to fill the vacancy. At such election there shall also be elected a successor to the director of the board of education whose term of office expires and in case of vacancy or vacancies to be filled at such time the successor or successors to the office so vacant. In such case the successor or successors shall be nominated and voted for as is provided for commissioners.

§ 105. Election District] Each ward shall constitute an election district. Every legal voter, otherwise qualified, who shall have been a resident of the county in which such city is located for thirty days next preceding a city election, and a resident of the election precinct in which he offers his vote for ten days preceding such election, is declared a citizen of said city and shall be entitled to vote at all city elections; provided, that the board of commissioners shall provide for the registration of all voters in the manner required by the laws of the state, and no person shall be entitled to vote in any other place than the ward or precinct where he has resided for ten days next preceding such election.

§ 106. Elections—How Conducted] The manner of conducting and voting at elections to be held under this act, and contesting the same, the keeping of the poll lists and canvassing the votes, shall be the same, as nearly as may be, as in the case of the election of county officers under the general laws of this state, except as herein otherwise provided. The judges of the election shall appoint clerks when necessary to fill vacancies, and the judges and clerks shall take the same oath and have the same powers and authority as the judges and clerks of the general state elections. After the closing of the polls the ballots shall be counted and returns made out and returned, under seal, to the city auditor within two days after the election, and thereupon the board of commissioners shall examine and canvass the same, and declare the result of the election and cause a statement thereof to be made on its journal.

§ 107. Nominations—How Made] Candidates for mayor and commissioner and directors of the board of education of the independent school district may be nominated only in the manner following: A certificate of nomination containing the name of the candi-

date for the office to be filled, his residence, his business address and the office for which he is nominated, shall be signed by fifteen electors residing in such city for each one thousand, or major fraction thereof, of population of such city as shown by the last preceding federal or state census; provided, that no petition shall in any city be signed by less than twenty-five electors, and provided, further, that no petition in any city need be signed by over one hundred and fifty electors residing within the city; provided, however, that the signatures of such electors need not be all appended to one paper. Each elector signing a certificate of nomination shall add to his signature his place of residence and his business. Such certificate of nomination shall be filed with the auditor of the city not more than thirty nor less than ten days before the date for the holding of the election. Each certificate of nomination may contain the name of as many members of the board of commissioners or directors of the board of education of the independent school district as are to be elected at such election.

§ 108. Ballots] All official ballots shall be white in color and of good quality of printing paper, and the names shall be printed in black ink and in the English language only. The names of candidates for each office shall be arranged in alphabetical order and without other designation than that of the office for which they are candidates. When more than one member of the board of commissioners or more than one school director is to be elected, the ballot shall contain instructions as to how many candidates for the office of commissioner or director are to be voted for. There shall be a circle at the left of the name of each candidate on the ballot and no other circle shall appear on the ballot. There shall be two separate ballots at each election at which there are elected members of the board of commissioners and school directors, upon one of which said ballots shall be printed the names of candidates for mayor and commissioners, and upon the other of which said ballots shall be printed only the names of the candidates for school directors. The judges of election shall keep separate poll books of the votes cast for mayor and of the votes cast for school directors, and the ballots cast for mayor and commissioners and the ballots cast for school directors shall be deposited in separate ballot boxes, which ballot boxes shall be provided by the board of commissioners.

§ 109. Judges] The board of commissioners shall at its regular meeting next preceding the annual election appoint three judges^a for each precinct or voting place, who shall act as judges of election for such precinct; provided, that no candidate for office at such election shall act as judge or clerk.

§ 110. The person having the highest number of votes for any office shall be declared elected. In case of a tie in the election of any officer it shall be determined by lot in presence of the board of com-

missioners in such manner as they shall direct, which candidate or candidates shall hold office.

§ 111. Duty of City Auditor] It shall be the duty of the city auditor, within two days after the result of the election is declared, to notify all persons elected to office of their election, and unless such person shall qualify in ten days after such notice the office shall become vacant.

§ 112. New Elections May be Called—When] If there is a failure to elect any officer herein required to be elected, or the person elected shall fail to qualify, or for any other cause that may arise, a vacancy exists, the board of commissioners shall forthwith order a new election therefor, and in all cases necessary for the purpose of this act may call special elections, appointing judges therefor, canvass the returns thereof, and provide by ordinance the mode of conducting the same; and shall give notice of such special elections, in which shall be stated the questions to be voted upon, and cause such notices to be published for the same length of time, and in the same manner as is required in the case of regular city elections in such city.

§ 113. Term of Office—Commencement of] The terms of office of the mayor and commissioners and directors of the board of education of the independent school district shall commence on the first Monday in May of the year in which they are elected.

§ 114. Vacancy—How Filled] Any officer moving from the city, or any officer who shall refuse or neglect for ten days after notice of his appointment, to enter upon the discharge of the duties of his office, shall be deemed to have vacated his office, and the board of commissioners, in the case of a city officer, and the board of education, in the case of a school officer, shall proceed to fill such vacancy as herein prescribed.

§ 115. The fiscal year of each city organized under this act shall commence on the first day of September of each year.

§ 116. Annual Appropriation Ordinance] The board of commissioners shall at its first regular meeting in September of each year, or within ten days thereafter, pass an ordinance to be termed the annual appropriation ordinance, in which the board of commissioners may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation. Such ordinance shall specify the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose, which amount shall be appropriated to the credit of the proper fund. No further appropriation shall be made at any other time within such fiscal year. In said annual appropriation ordinance shall also be contained the annual tax levy, which, for all purposes excepting for the payment of principal and interest upon the bonded indebtedness of the city, shall not exceed a sum equal to twenty mills upon each dollar of the assessed valuation for the current fiscal year

of the real and personal property taxable by the corporate authorities of the city. In addition to said twenty mills there may be levied a sum sufficient to pay the interest on the bonded indebtedness, and the amount necessary for any sinking fund established to meet the principal of the bonded indebtedness as it may mature. The appropriation ordinance shall also apportion among the various funds provided for by the ordinance the amount levied for general purposes, and shall designate the amount to be applied upon each fund. The appropriation ordinance shall also specify the amount levied to pay the interest on each outstanding bond issue, and the amount levied for the purposes of each sinking fund established to pay the principal of each series of bonds when matured. The annual appropriation ordinance shall also provide for the levy of a tax for the support of the schools of the independent school district of the city, and for the payment of the interest upon the bonded indebtedness of such school district, and for the establishment of a sinking fund to pay the principal of such bonded indebtedness when same shall mature. The tax levy for school purposes other than the payment of the principal and interest of the bonded indebtedness shall not exceed annually a sum equal to twenty-five mills upon the assessed valuation of the real and personal property taxable for the current fiscal year for school purposes. Immediately after the passage and publication of the annual appropriation ordinance the city auditor shall certify the tax levies therein made to the county auditor of the county in which the city is situated, in the following form, viz: "

For city general purposes.....	\$
For city interest fund.....	\$
For city sinking fund.....	\$
For independent school district general purposes.....	\$
For independent school district interest fund.....	\$
For independent school district sinking fund.....	\$

§ 117. Expenditures Must Be Limited to Appropriation] Neither the board of commissioners nor any other officer of the city or of the independent school district shall add to the corporation or school district expenditures in any one year anything over and above the amount provided for in the annual appropriation ordinance, except as is herein otherwise especially provided; and no expenditure for any improvement to be paid out of the general fund of the corporation shall exceed in any one year the amount provided for such improvement in the annual appropriation ordinance; provided, however, that nothing herein contained shall prevent the board of commissioners from ordering, by a unanimous vote of all of the members of the board, any improvement the necessity for which is caused by any casualty or accident happening after such annual appropriation is made. The board of commissioners may order the mayor to borrow a sufficient amount to provide for the necessary expenses to be in-

curred in making any improvements, the necessity for which has arisen as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall be added to the amount authorized to be raised in the next general tax levy and embraced therein. No contract shall be made by the board of commissioners or by the board of education of the independent school district and no expense incurred by any officer of the city or school district, whether the objects of the expenditure shall have been ordered by the board of commissioners or by the board of education or not, unless an appropriation shall previously have been made concerning such expense excepting as herein otherwise expressly provided.

§ 118. Funds Paid Into Treasury] All funds belonging to the city and derived from taxation, licenses, fines, forfeitures, revenues arising from the operation of waterworks or any other public utility owned or operated by the city, or from any other source, shall be paid into the city treasury, and the board of commissioners shall by ordinance designate to what fund or funds all moneys derived from said various sources shall be applied.

§ 119. Transfer of Funds] No moneys belonging to any fund shall ever be diverted to the use of any other fund, and no warrant shall be drawn upon any fund not properly chargeable to such fund; provided, that if, upon the expiration of any fiscal year there remains in any fund any balance after paying all obligations of the city properly chargeable against such fund, the board of commissioners may, by a unanimous vote, transfer such balance to such other fund as they may deem advisable; provided, further, that no balance remaining at the end of any fiscal year in any fund raised for the purpose of paying the principal or interest upon the bonded indebtedness of the city shall ever be transferred to any other fund so long as any bonded indebtedness continues to exist.

§ 120. Warrant Cannot be Drawn in Excess of Cash] No warrant shall be drawn pursuant to any appropriation in excess of the cash actually in the treasury of the city to the credit of the fund provided for such appropriation and derived from sources other than the tax levy added to ninety-five per cent of the tax levy made for such fund for the current fiscal year, and no liability shall be incurred under any appropriation for which a warrant cannot be drawn under the provisions of this section. Any member of the board of commissioners voting to incur a liability or issue a warrant in violation of the provisions of this section, and any mayor or auditor signing, issuing or delivering any warrant in violation of the provisions of this section, and any treasurer paying any warrant issued in violation of the provisions of this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hun-

dred dollars nor more than one thousand dollars, and may, at the discretion of the court, be deprived of his office.

§ 121. Obligations Incurred Limited] No obligation under any appropriation shall be incurred nor warrant drawn in excess of seventy-five per cent of the cash in the treasury in the fund provided for such appropriation and derived from sources other than the tax levy added to the amount of the tax levy for such fund for the current fiscal year prior to the second Monday in May of each fiscal year.

§ 122. Sinking Fund] No moneys raised by taxation or otherwise for the purpose of a sinking fund to pay the bonded indebtedness on the city or any part thereof shall ever be applied temporarily or otherwise to any other purpose, and any officer of the city diverting or being accessory to a diversion of any moneys belonging to any sinking fund shall be guilty of a felony. The board of commissioners may invest the moneys in the sinking fund in the following securities only, to-wit: Bonds of the United States, bonds of the state of South Dakota, bonds of counties of the state of South Dakota, bonds of cities of the state of South Dakota of the first, second and third classes, and of cities under commission, and of independent school districts in such cities, including bonds of the city itself; provided, that whenever any money is invested in the manner provided by this section such investment, unless the same be in bonds of the United States or of this state, shall in no case be for a longer period than sixty days prior to the time of the maturity of the indebtedness for which such sinking fund was created; and, provided, further, that if the sinking fund be invested in the bonds of the city for the payment of which the sinking fund was established, the bonds so purchased shall be forthwith cancelled and the same shall not thereafter be re-issued; provided, also, that moneys belonging to the sinking fund may be loaned, upon depositing with the city treasurer as collateral security of bonds in which the sinking fund could be invested under the provisions of this section. In no case shall any money be loaned to a greater amount than ninety per cent. of the par value of the bonds deposited as collateral, nor for a longer period than sixty days prior to the time of the maturity of the indebtedness for which the sinking fund was created.

§ 123. Board Must Designate Depository] The board of commissioners shall annually, at the beginning of each fiscal year, designate the depository in which the funds belonging to the city shall be deposited. The board of commissioners shall require the depository so selected to furnish good and sufficient bonds or other security for the safe keeping and repayment of all moneys so deposited and may at any time require the depository to furnish additional security. The board of commissioners may also, by a majority vote of all of the members thereof, at any time during the fiscal year, change the depository. All interest derived from the deposit of funds belonging to

the city shall be the property of the city. All interest received upon deposits of such moneys shall be apportioned among the several funds proportionately to the amount in each fund or deposit.

§ 124. Granting of Franchise Must be Submitted to Vote] The board of commissioners shall grant no franchise to any street railroad, gas, water, sewerage or other public utility authorizing any person or corporation to occupy any of the streets, alleys or public places of the city without first submitting the proposition as to whether such franchise should be granted to a vote of the electors of the city, and no such franchise shall be granted unless approved by a majority vote of the electors of the city at a general election, or at a special election called for the purpose of voting upon such proposition; and in no case for a longer period than twenty years except as otherwise provided in subdivision 24 of section 54 of this act.

§ 125. Independent School District] Every city organized under the provisions of this act shall constitute an independent school district and, as such independent school district, shall be a body corporate. Such independent school district shall be deemed to be a continuation of the independent school district constituted by said city prior to the organization of said city under this act, and the making of such change of organization shall not be construed to effect a change in the legal identity as a corporate body of such independent school district. Such independent school district shall be governed by the laws of South Dakota applicable to independent school districts, excepting as herein otherwise provided.

§ 126. Board of Education—How Elected—Term] The board of education of the independent school district of cities organized under this act shall consist of five directors whose term of office shall be five years, one of whom shall be elected annually at the election held for commissioners of said city; provided, that the first board of education under this act shall be elected at the election held, and the term of office of each determined by lot as provided under the provisions of this act for the first board of commissioners in cities organized under this act. The board of education shall elect a clerk and a treasurer and all officers and employees of the independent school district; provided, that in all cities of over ten thousand population by the last preceding state or federal census the city treasurer shall be ex-officio treasurer of the independent school district.

§ 127. No director of the board of education shall, directly, or indirectly, engage in any business transaction with the board of education whereby any money is to be paid, directly or indirectly, out of the treasury of said board of education to such director, or whereby such director may, directly or indirectly, receive any pecuniary benefit.

§ 128. Board to Make Estimate of Moneys Needed] The board of education of a city organized under this act shall, on or before the

regular meeting in August of each year, make an estimate of the moneys necessary for the support of the schools for the ensuing fiscal year, which fiscal year shall coincide with the fiscal year of the city. Such estimate shall itemize the various items of estimated expenditures and shall be certified by the clerk of the board of education to the city auditor on or before the first day of September of each year. The board of commissioners shall, at the time of making the tax levy for city purposes, also levy the tax for the support of the schools of the independent school district of the city for the fiscal year next ensuing, as estimated by the board of education, which estimate and tax must not exceed in any fiscal year twenty-five mills on the dollar on all personal and real property within the city which is taxable for school purposes excepting as provided in section 116 of this act, and the city auditor shall certify such levy to the county auditor, as hereinbefore provided.

§ 129. Board to Have Supervision of Expenditures] The board of education shall supervise the expenditure of the moneys raised by taxation or otherwise for the support of the schools. All warrants for the expenditure of school money shall be signed by the president and countersigned by the clerk of the board of education.

§ 130. No Warrant May be Drawn in Excess of Cash on Hand] No warrant shall ever be drawn for the expenditure of moneys raised by taxation or otherwise for the support of the schools in excess of the cash actually in the treasury of the school district derived from sources other than the tax levy and applicable to the payment of the current expenses of the school district added to ninety-five per cent of the tax levy made for the current fiscal year, and no liability shall be incurred by the board of education or any officer thereof for which a warrant cannot be drawn under the provisions of this section. Any member of the board of education voting to incur a liability or issue a warrant in violation of the provisions of this section, and any president or clerk of a board of education signing, issuing or delivering any warrant in violation of the provisions of this section, and any city or school treasurer paying any warrant issued in violation of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars and may at the discretion of the court be deprived of his office.

§ 131. Sinking Fund Can be Used Only to Pay Bonded Indebtedness] No moneys raised by taxation or otherwise for the purposes of a sinking fund to pay the bonded indebtedness of the independent school district of any city organized under this act shall ever be applied temporarily or otherwise to any other purpose, and any officer of the board of education or of the city diverting or being accessory to a diversion of any moneys belonging to any sinking fund of the independent school district shall be guilty of a felony. The

board of education of the independent school district in all cities may invest the moneys belonging to the sinking fund of the independent school district in the same securities in which the sinking fund of the city may be invested, as hereinbefore provided, and may loan the moneys belonging to the sinking fund of the independent school district upon the same security as is hereinbefore provided for the loaning of moneys belonging to the sinking fund of the city, and under the same restrictions.

§ 132. In all cities having a population of ten thousand or over by the last preceding federal or state census the funds belonging to the independent school district shall be deposited in the same depository in which the funds belonging to the city shall be deposited, as hereinbefore provided, and the bonds or other security for the safe keeping and repayment of moneys belonging to the city shall include the safe keeping and repayment of all moneys belonging to the independent school district. All interest derived from the deposit of funds belonging to the school district shall be the property of the school district.

§ 133. Director May be Removed] The provisions of section 15 of this act, providing for the removal of a member of the board of commissioners by the electors qualified to vote for his successor, shall also apply to the removal of a director of the board of education of the independent school district, and any director of the board of education of the independent school district may at any time be removed in the manner provided by said section.

§ 134. Violation—Penalty] Any violation of any provision of this act for which no penalty is herein specifically imposed shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for a period not exceeding ninety days, or by both such fine and imprisonment at the discretion of the court.

§ 135. Action May be Maintained to Prevent Violation] Any citizen and taxpayer residing within the city may maintain an action or proceeding to prevent, by injunction, mandamus, prohibition, certiorari or other proper remedy, any violation of any of the provisions of this act.

§ 136. Laws Applicable—When] The provisions of all laws relating to or in force in cities shall apply to cities organized under this act, excepting in so far as said laws are inconsistent with or in conflict with the provisions of this act; provided, however, that the board of commissioners of cities organized under this act shall possess all of the powers conferred by any such laws upon the mayors and city councils of other cities; provided, further, that all laws applicable solely to cities of the third class shall only apply to cities organized under this act and having a population of two thousand or less by the last preceding federal or state census; that all laws applicable solely to cities of the second class shall only apply to cities un-

der this act and having a population of over two thousand and less than ten thousand by such census; and that all laws applicable solely to cities of the first class shall only apply to cities under this act and having a population of ten thousand or over by such census.

§ 137. Repeal] All laws or parts of laws in conflict herewith are herewith repealed, so far as the same apply to cities organized under this act.

Approved March 12, 1907.

CHAPTER 87

(H. B. 205)

RELATING TO CITY OFFICERS

AN ACT Entitled an Act to Amend Section 1234 and Section 1236 of the Revised Political Code of the State of South Dakota, Relating to City Officers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1234 and section 1236 of the Revised Political Code of the state of South Dakota be amended to read as follows:

Section 1234. City Elective Officers] There shall be elected in all cities organized under this chapter the following officers:

A mayor, two aldermen for each ward.

A city treasurer, a police justice and

A city justice of the peace.

Section 1236. City Appointive Officers] There shall be appointed by the mayor, with the approval of the city council, a city auditor, city attorney, city engineer, city assessor and such other officers as may by the city council be deemed necessary and expedient.

§ 2. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 6, 1907.

CHAPTER 88

(H. B. 59)

AUTHORIZING CITIES TO OWN AND OPERATE TELEPHONE SYSTEMS

AN ACT Authorizing Cities to Own and Operate Telephone Systems.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Power of City Council] The city council of any city in this state shall have power to acquire, construct, equip, maintain and op-

erate a telephone system for the purpose of providing its inhabitants with telephone service, and to make such rules and regulations concerning the same as it may deem advisable.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 6, 1907.

CHAPTER 89

(S. B. 142)

RELATING TO VACANCIES IN OFFICE OF MAYOR

AN ACT Entitled an Act to Amend Section 1182 of the Revised Political Code of 1903, Relating to Vacancies in the Office of Mayor in Cities of the First and Second Classes.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 1182 of the Revised Political Code of 1903 of the state of South Dakota, be amended to read as follows, viz:

Section 1182. In case of the death, resignation, failure to qualify, removal from the city, removal from office, or other disability of the mayor to discharge the duties of his said office, in cities belonging to the first and second class, the powers and duties of said office for the residue of the term for which such mayor shall have been elected, or until such disability shall be removed, shall devolve upon the president of the city council.

§ 2. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 1, 1907.

CHAPTER 90

(H. B. 262)

RELATING TO THE LIABILITY OF CITIES AND TOWNS FOR PERSONAL INJURIES

AN ACT Entitled an Act Concerning Liability of Cities and Towns for Personal Injuries and Repealing All Acts and Parts of Acts in Conflict Herewith.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Person Injured Must Give Notice to Clerk] No action for the recovery of damages for personal injury or death against any

city or incorporated town on account of its negligence shall be maintained unless written notice of the time, place and cause of injury is given to the clerk of the city or incorporated town, by the person injured, his or her agent, or attorney within sixty days after the injury, and any action for such recovery must be commenced within two years from the occurrence of the accident causing the injury or death, but the notice given under the provisions of this act shall not be deemed invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of injury.

Provided, it is shown that there was no intention to mislead and that the city council or board of trustees was not misled thereby.

§ 2. Repeal] All acts and parts of acts in conflict with this act, are hereby repealed.

Approved March 7, 1907.

CHAPTER 91

(S. B. 227)

RELATING TO REFUNDING OF BONDED INDEBTEDNESS OF CITIES

AN ACT Entitled an Act to Amend Sections 1385 and 1387 of the Revised Political Code of 1903, Relating to Refunding Bonded Indebtedness of Cities.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 1385 of the Revised Political Code of 1903 be, and the same is hereby amended to read as follows:

Section 1385. Each incorporated city organized under and by virtue of a special charter or under and by virtue of the general law of this state, is hereby authorized and empowered by and through its city council, when deemed in the judgment of such council to be to the best interests of the city, to issue its negotiable bonds in the name of the city for the purpose of refunding the bonded or floating indebtedness of such city, which is at the time, due and payable, or is about to become due and payable, or whenever such indebtedness can be refunded at a lower rate of interest than the then existing rate of interest on the said indebtedness.

§ 2. That section 1387 of the Revised Political Code of 1903 be, and the same is hereby amended to read as follows:

Section 1387. Such bonds may be issued and sold by the city council by resolution upon a majority vote of all members elect of the city council, but shall not be sold at a price less than par value thereof and the accrued interest thereon, and the proceeds of sale of such bonds shall be applied solely to the payment of the bonded or float-

ing warrant indebtedness of such city ordered refunded, or such bonds may be exchanged at not less than par value for not less than an equal amount at par value of such original bonds or warrants of such city. And no bond so issued shall be delivered to the purchaser until a like amount of the refunded bonds or warrants are surrendered and cancelled.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1907.

CHAPTER 92

(H. B. 67)

RELATING TO POWERS OF CITY COUNCILS

AN ACT to Amend Subdivision Twenty-four (24) of Section 1229 of the Revised Political Code of 1903, as Amended by Chapter 221 of the Session Laws of 1903, Relating to Powers of City Councils.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That subdivision twenty-four (24) of section 1229 of the Revised Political Code of 1903, as amended by Chapter 221 of the Session Laws of 1903, be and the same is hereby amended so as to read as follows:

"24. To permit, regulate or prohibit the locating, constructing or laying a track of any street railroad in any street, alley or public place; but such permission shall not be for a longer time than twenty years.

"Provided, that any city council of any city of not less than twelve thousand (12,000) inhabitants may pass an ordinance granting such permission for a period of not exceeding thirty years, but such ordinance shall be void unless provision is made therein that the same shall be submitted for approval of the electors of said city at an election called by the city council for the purpose and held not before the expiration of thirty days nor after the expiration of sixty days after the publication of said ordinance, and after the publication of notice of said election in every issue of a daily newspaper of general circulation in said city, for not less than two weeks prior to said election, and unless said ordinance is affirmatively approved and ratified by a three-fifths majority vote at such election, unless said ordinance shall have been previously voted upon and ratified by a three-fifths majority vote at an election held under the provisions of Article IV of Chapter 14 of the Revised Political Code of 1903, which election,

if so held, shall be a substitute for the election herein provided for. Such permission and any contract in pursuance thereof shall provide that at the option of the city, declared not more than three years nor less than one year before the expiration of such permission, the plant and property, if any, belonging to or used by the grantee named in said permission, or his or its successors in interest, in the streets, avenues and other public places, shall, at the termination of said permit or franchise, upon the payment of a fair valuation thereof, be and become the property of said city; but the grantee named in said permit, or his or its successors, shall be entitled to no payment because of any valuation derived from the franchise. Provided, however, that such option shall not be exercised unless at the time of exercising the same the city shall be authorized and empowered to acquire and operate such plant and property."

§ 2. Emergency] An emergency is hereby declared to exist, and this act shall take effect and be in force on and after its passage and approval.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 8, 1907.

CHAPTER 93

(H. B. 9)

RELATING TO THE LOANING OF THE SINKING FUNDS OF INCORPORATED TOWNS

AN ACT Entitled an Act to Provide for the Loaning of the Sinking Funds of Incorporated Towns in the State of South Dakota, and Designating the Kinds of Securities in which said Sinking Funds may be Invested and the manner of Making said Loan or Investment.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Authorized to Loan] That all incorporated towns of the state of South Dakota that are creating sinking funds for the payment of any bonded indebtedness are hereby empowered and authorized to loan or invest said sinking funds, or any part thereof, in the manner and in the kind or kinds of securities hereinafter stated or specified.

§ 2. Power of Board of Trustees] That whenever any incorporated town shall desire to loan or invest any sinking funds or any part thereof the board of trustees of said incorporated town shall pass a resolution that it is for the best interests of said incorporated town that the sinking fund or any part thereof shall be invested or

loaned, also stating the kind or kinds of securities in which said fund, or any part thereof, shall be so loaned or invested, and said resolution shall be published for three successive weeks in the official newspaper of said incorporated town, and at the expiration of such publication the board of trustees of said incorporated town shall again vote on the resolution, and if it receive a majority vote of the said board of trustees of said incorporated town then the treasurer of said incorporated town shall be instructed and authorized by the said board of trustees to invest said sinking fund, or part thereof, in the kind or kinds of securities determined upon by the said board of trustees.

§ 3. Securities Designated] All sinking funds or parts thereof that the board of trustees of said incorporated town shall determine to invest or loan shall be invested or loaned in the following securities only: United States bonds, state bonds of the state of South Dakota, municipal, school and county bonds of municipalities and counties of South Dakota and in such banks of the state of South Dakota as the said board of trustees shall designate.

Provided, that in all cases where any money is loaned or invested in the manner provided in this article that said loan or investment shall in no case be for a longer period than sixty days prior to the time of the maturity of the indebtedness for which said sinking fund so loaned was created.

Provided, further, that in all cases where said sinking fund or any part thereof shall be loaned to banks that the bank or banks so receiving said loan shall give to the said incorporated town a good and sufficient undertaking, to be approved by the board of trustees of the incorporated town so making said loan in double the amount of said loan conditioned for the payment of said loan to said incorporated town at its maturity, together with all unpaid interest and costs of enforcing the terms of said undertaking.

§ 4. Interest] All interest accruing to or derived from any loans made under the provisions of this act shall, when collected, be paid into the proper sinking fund from which said loan was made.

§ 5. Emergency Declared] Whereas there is no law in force in the state of South Dakota providing for the loaning or investment of the sinking funds of incorporated towns, therefore an emergency exists, and this act shall be in force from and after its passage and approval.

Approved February 25, 1907.

CHAPTER 94

(H. B. 161)

RELATING TO THE POWERS OF CITY COUNCILS

AN ACT Amending Section 1229 of the Revised Political Code of 1903, as Amended by Chapter 155 of the Session Laws of 1903 and Chapter 67 of the Session Laws of 1905, Relating to the Powers of City Councils.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That subdivision 34 of section 1229 of the Revised Political Code of 1903, as same was amended by Chapter 155 of the Session Laws of 1903, be, and the same is hereby amended to read as follows:

Subdivision 34. To suppress bawdy or disorderly houses, houses of ill fame or assignation within the limits of the city and within one mile of the outer boundaries of the same, and also to suppress gambling, gaming and gambling houses, lotteries and all fraudulent devices and practices for the purpose of gambling or obtaining money or property, and for such purpose may enter any building, room, tent, booth or shanty or other place where roulette, faro, keno or gift enterprises by whatever name it may be called, or gambling device, or game of chance is practiced, or allowed to be practiced and carried on within the limits of the city and within one mile of the outer boundaries of the same; and to seize and destroy any keno table, faro table, faro bank, shuffle board, bagatelle, playing cards, pigeon hole, roulette or any other instrument, device or thing used for gambling, found in any of said places; and to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations; and the provisions of this subdivision, and the powers herein granted shall extend to all cities in this state, whether incorporated under a special charter or the general laws.

§ 2. Amendment] That at the end of said section 1229 there be added the following:

Subdivision 82. To regulate in such manner as may not be inconsistent with the laws of this state, the sale of spirituous, vinous, fermented or other intoxicating liquors at retail, and to revoke licenses granted for the sale of such liquors for the violation of the provisions of any state law, or of any city ordinances, and to establish districts within which licenses may be granted for the sale of such intoxicating liquors at retail.

Subdivision 83. The city councils may, not oftener than once in five years, compile, but not revise or amend, for publication in book form the ordinances of the city. Whenever such compilation shall be made, it shall not be necessary to publish the same in the official newspaper of the city.

§ 3. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 4. Emergency] An emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 20, 1907.

CHAPTER 95

(H. B. 87)

RELATING TO POWERS OF CITY COUNCILS

AN ACT Relating to the General Powers of City Councils and Incorporated Towns, and Providing for the Destruction of Noxious, Dangerous and Unhealthful Vegetation, and for the Removal of Snow and Ice From Sidewalks, and Taxing the Expenses Thereof to Real Estate in Certain Cases.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Provisions Added] There shall be added to the general powers of city councils and trustees of incorporated towns, as defined in section 1229 of the Political Code of 1903, the following provisions:

I. To determine and define what shall be deemed to be noxious, dangerous or unhealthful vegetation.

To fix limits within which such noxious, dangerous or unhealthful vegetation shall not be permitted to grow.

To provide for the destruction of such noxious, dangerous or unhealthful vegetation within the limits so fixed, and to tax the cost thereof to the property upon which such noxious, dangerous or unhealthful vegetation is destroyed.

II. To provide by ordinance for the removal of snow and ice from sidewalks and to tax the expense thereof against abutting property.

§ 2. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] An emergency is hereby declared to exist, and this act shall take effect from and after its passage.

Approved February 20, 1907.

CONSTITUTION

CHAPTER 96

(S. J. R. 3)

PROPOSING AN AMENDMENT TO THE CONSTITUTION .

A JOINT RESOLUTION Proposing and Agreeing to an Amendment to Article XI of the Constitution of the State of South Dakota, and Submitting the Same to a Vote of the People.

Be it Resolved by the Senate of the State of South Dakota, the House of Representatives Concurring:

§ 1. That at the next general election in this state the following amendment to article XI of the constitution of the state of South Dakota, which is hereby agreed to, shall be submitted to the electors of this state for their approval:

That article XI of the constitution of the state of South Dakota be amended so as to read as follows:

ARTICLE XI.

Revenue and Finance

§ 1. The legislature shall provide for raising sufficient revenue to defray the ordinary expenses of the state by an annual tax, as nearly uniform from year to year as practicable. And for the purpose of paying the public debt, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and the principal of such debt within ten years from the final passage of the law creating the debt.

§ 2. All taxes shall be uniform on the same class of subjects and shall be levied and collected for public purposes.

§ 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.

§ 4. The legislature shall classify inheritances, devises, legacies and bequests in respect to the recipients thereof, and provide for a graduated or progressive tax thereon, with such exemptions to the surviving husband or wife, children and other relatives as it may prescribe.

§ 5. The legislature shall classify incomes in respect to the re-

cipients thereof, and provide for a graduated or progressive tax thereon with such exemptions as it may prescribe.

§ 6. The property of the United States and of the state, county, and municipal corporations, both real and personal, shall be exempt from taxation.

§ 7. The legislature shall by general law exempt from taxation, property used exclusively for agricultural and horticultural societies, for school, religious, including parsonage, and president's house of sectarian colleges, cemetery and charitable purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation.

§ 8. All laws exempting property from taxation except as provided for in this article, shall be void.

§ 9. No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied.

§ 10. All taxes levied and collected for state purposes shall be paid into the state treasury. No indebtedness shall be incurred or money expended by the state and no warrant shall be drawn upon the state treasurer, except in pursuance of an appropriation for the specific purpose first made. The legislature shall provide by suitable enactment for carrying this section into effect.

§ 11. The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special taxation of contiguous property or otherwise. For all corporate purposes all municipal corporations may be vested with authority to assess and collect taxes; but such tax shall be uniform on the same class of subjects.

§ 12. The making of profit, directly or indirectly, out of state, county, city, town or school district money, or using the same for any purpose not authorized by law, shall be deemed a felony and shall be punished as provided by law.

§ 13. An accurate statement of the receipts and expenditures of the public moneys shall be published annually, in such manner as the legislature may provide.

CHAPTER 97

(S. J. R. 22)

PROPOSING AN AMENDMENT TO THE CONSTITUTION**A JOINT RESOLUTION for Increasing Salary of Attorney General.**

Be it Resolved by the Senate of the State of South Dakota, the House of Representatives Concurring:

§ 1. Amendment Submitted] That at the next general election in this state, the following proposed amendment to the constitution of the state of South Dakota which is hereby agreed to, shall be submitted to the electors of this state for their approval, which amendment when approved and ratified shall become a part of the constitution as article 29 thereof. Article 29. The attorney general shall receive the same annual salary as is received by the other state officers as enumerated in article 4 section 12 of this constitution.

CHAPTER 98

(S. B. 124)

PROVIDING FOR PUBLICATION OF DEBATES OF CONSTITUTIONAL CONVENTIONS

AN ACT Entitled an Act Providing for the Publication of the Debates of the Constitutional Conventions of 1885 and 1889.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Librarian] The state librarian is hereby directed to edit and prepare for publication, with suitable introduction and notes, the debate of the constitutional convention of 1885 which formulated the constitution of the state of South Dakota and the constitutional convention of 1889 which revised the same.

§ 2. Number of Copies] One thousand sets of such debates shall be printed and substantially bound in half sheep binding, under the direction of the commissioner of public printing as are the reports of state officers and boards.

§ 3. Duty of Secretary of State] The secretary of state shall supply six sets of such published debates each, to the state library, the supreme court library and the library of the law school at Vermillion, and one copy each to each state office and institution, one copy to each member of the present legislature and shall retain one hundred and fifty copies in his possession; all of the foregoing sets of

such debates to remain and be the property of the state of South Dakota. The secretary of state shall supply one set of such debates to each state and territory and to the congressional library at Washington and the remainder he shall offer for sale to the public at such price as will defray the cost of publishing the same when all of such balance is sold. All monies [moneys] derived from the sale of such debates shall be paid into the general fund of the state treasury.

§ 4. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved February 27, 1907.

COUNTIES

CHAPTER 99

(H. B. 209)

DEFINING BOUNDARIES OF TRIPP COUNTY

AN ACT Entitled an Act Defining the Boundaries of Tripp County, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Boundaries Defined] That the boundaries of the unorganized county of Tripp be and the same are hereby defined as follows:

Commencing at the intersection of the Third Guide Meridian with the middle of the main channel of the White River; thence south along said Third Guide Meridian to the south boundary line of the state; thence east on said boundary line to its intersection by the Tenth Guide Meridian; thence north on said last mentioned Tenth Guide Meridian to its intersection with the middle of the main channel of the White river; thence west along the middle of the main channel of said White river to point of beginning.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of the foregoing act are hereby repealed.

Approved March 2, 1907.

CHAPTER 100

(H. B. 245)

RELATING TO THE DIVISION OF ORGANIZED COUNTIES

AN ACT Entitled an Act to Give Effect to Section One of Article Nine of the Constitution, Relating to the Division of Organized Counties.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Question Submitted] Whenever a majority of the voters residing in any portion, consisting of not less than twenty-four congressional townships of any organized county in this state, as determined by the vote for governor at the last general election, shall petition the county commissioners of such county for division thereof and for the organization of a new county, setting forth in said petition the lines upon which the petitioners desire such county to be divided and the boundaries of the proposed new county, together with the name they desire to be given the proposed new county in which such petitioners reside, it shall be the duty of the county commissioners of such county to submit the question of the division of such county to the voters of such county at the next general election. Provided, such petition shall be filed with the county auditor not later than the first Monday in July of any general election year, and provided that each portion of such county shall, after division as prayed for in such petition, contain not less than twenty-four congressional townships.

§ 2. Name—Duty of Governor] If a majority of the votes cast at the next general election in such county shall be favorable to such division of such county, the portion in which the county seat thereof is located shall retain the name and organization of such county, and the portion in which the county seat is not located shall take the name prayed for in the petition for the division of the county, and the governor of the state shall forthwith proceed to organize the same as a county under such name, in the same manner as is provided by article two of chapter twelve of the Political Code of 1903, and until such organization is perfected the said portion of such county shall, for criminal and civil purposes, remain and be a portion of such original county.

§ 3. Indebtedness—How Apportioned] Any bonded indebtedness of such county shall be apportioned to each new division, ratably upon the basis of the last assessment previous to the division thereof, and each portion of such county shall be charged with and shall pay its just portion of said debt, upon the basis of such apportionment, and the newly organized county may issue bonds to meet its portion thereof. Provided, the floating or warrant indebtedness of such county shall be apportioned in the same manner, and each por-

tion of such county shall be charged with and shall pay its just portion of said floating debt.

§ 4. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 1, 1907.

CHAPTER 101

(H. B. 104)

RELATING TO LOANING OF COUNTY SINKING FUND

AN ACT to Amend Chapter 156 of the Session Laws of 1905.

Be it Enacted by the Legislature of the State of South Dakota:

That chapter 156 of the Session Laws of 1905, being an act for the loaning of the sinking fund of counties of the state of South Dakota, and designating the kinds of securities in which said funds may be invested and the manner of making said loans or investments be amended to read as follows:

Section 1. Authorized to Loan] That the counties, school districts and independent school districts of the state of South Dakota that are creating sinking funds for the payment of any bonded indebtedness are hereby empowered and authorized to loan or invest said sinking funds or any part thereof, in the manner and in the kind or kinds of securities hereinafter stated or specified.

Sec. 2. Duties of Board.] That whenever any county, school district or independent school district shall desire to loan or invest any sinking fund or any part thereof, the board of county commissioners of said county, the school district board of said school district, or the board of education of said independent school district, as the case may be, shall pass a resolution declaring that it is for the best interests of said county, school district or independent school district, that the sinking fund or a part thereof shall be invested or loaned, also stating the kind or kinds of securities in which such fund or part thereof shall be so loaned or invested, and if said resolution receives a majority vote of the said board, then the treasurer of said county, school district or independent school district shall be instructed by said board to invest said sinking fund or part thereof in the kind or kinds of securities determined upon by the said board.

Sec. 3. Securities Designated] That all sinking funds or parts thereof that the board shall so determine to invest or loan, shall be invested or loaned only in the following securities: United States

bonds, state bonds of the state of South Dakota, municipal, school and county bonds of municipalities and counties of South Dakota, and in such banks of the state of South Dakota as the said board shall designate.

Provided, that in all cases where any money is loaned or invested in the manner provided in this act, that said loan or investment shall in no case be for a longer period than sixty days prior to the time of the maturity of the indebtedness for which said sinking fund was created.

Provided, further, that in all cases where said sinking fund or any part thereof shall be loaned to banks, that the bank or banks so receiving said loan shall give to the said county, school district or independent school district a good and sufficient undertaking to be approved by such board of the county, school district, or independent school district making said loan, in double the amount of said loan, conditioned for the payment of said loan to said county, school district, or independent school district at its maturity, together with all unpaid interest and costs of enforcing the terms of said undertaking.

§ 4. Interest—Where Placed] All interest accruing to or derived from any loans made under the provisions of this act shall when collected be paid into the proper sinking fund from which said loan was made.

§ 5. All acts and parts of acts in conflict with this act are hereby repealed.

§ 6. Emergency Declared] Whereas, there is no law in force in the state of South Dakota providing for the loaning or investment of the sinking funds of counties, school districts or independent school districts, therefore an emergency exists, and this act shall be in force from and after its passage and approval.

Approved March 6, 1907.

CHAPTER 102

(S. B. 133)

RELATING TO THE DUTIES OF COUNTY AND TOWN TREASURERS

AN ACT to Amend Section 1079 of Article 12, Chapter 13 of the Revised Political Code of 1903, Relating to the Duties of County and Town Treasurers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1079 of article 12, chapter 13 of the Revised Code of 1903 be amended to read as follows:

Duty of Treasurer—Fees] The town treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his town, and on receipt of such moneys shall deliver duplicate vouchers therefor, one of which shall forthwith be transmitted by the county treasurer to the clerk of such town.

Each town treasurer shall be allowed and entitled to retain two per centum of all moneys paid into the town treasury for receiving, safe keeping and paying over the same according to law, except such moneys as are appropriated for bounty to soldiers of which he shall only be allowed to retain one per cent.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 3, 1907.

CHAPTER 103

(S. B. 120)

RELATING TO FUNDING OUTSTANDING INDEBTEDNESS

AN ACT Entitled an Act to Amend Section 963 of the Revised Political Code of 1903, Relating to Funding Outstanding Bonded Indebtedness and Judgment Indebtedness of Counties.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section nine hundred and sixty-three of the Revised Political Code of 1903 be, and the same is hereby amended so as to read as follows:

Section 963. Each and every organized county of this state is hereby authorized and empowered by and through its board of county commissioners, when in the judgment of said board it is deemed to be to the best interest of the county, to issue its negotiable bonds in the name of the county corporation, for the purpose of funding the outstanding bonded indebtedness existing against the county that is due and payable, or is about to become due and payable, or whenever said indebtedness can be refunded at a lower rate of interest, or whenever judgments have been entered on any such bonds or interest coupons, or for the purpose of funding any other judgment or judgments that have heretofore or that may hereafter be entered against any county in this state.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. Emergency] An emergency is hereby declared to exist and this act shall be in effect from and after its passage and approval.

Approved February 27, 1907.

CORPORATIONS

CHAPTER 104

(S. B. 79)

RELATING TO CORPORATIONS

AN ACT Entitled an Act to Amend Sections 404, 410, 423, 435, 780 and 786 of the Revised Civil Code of 1903, Relating to Domestic Corporations and Providing for Appointment of Resident Agents for Certain Domestic Corporations.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 404 of the Revised Civil Code of 1903 to be amended so as to read as follows:

Section 404. The instrument by which a private corporation is formed is called "articles of incorporation." And one of the directors or officers shall be a resident of this state

§ 2. Amendment] That section 410 of the Revised Civil Code of 1903 be amended so as to read as follows:

Section 410. The articles of incorporation must be subscribed by three or more persons, one of whom must be a resident of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyance of real property.

§ 3. Resident Agent] Every corporation of this state which is not doing or carrying on business within this state shall appoint a resident agent, who shall reside at the place of business or domiciliary office of such corporation in this state designated in the articles of incorporation, and such resident agent may be one of the officers of the corporation, and service of legal process upon such agent shall constitute legal and valid service upon such corporation. Provided, that nothing in this section shall be construed to invalidate service of process upon any resident officer of such corporation or upon its managing agent residing within this state, and service of such process upon any such resident officer or agent shall be and constitute legal service upon such corporation. Such appointment of a resident agent shall be made in writing, signed by the president or secretary of the corporation, and duly acknowledged, and shall be filed in the office of the secretary of state, but such resident agent may be appointed in the articles of incorporation of such corporation. A fee of five dollars (\$5.00) shall be paid by such corporation to the secretary of state

for filing such appointment of resident agent, in all cases where such agent is not appointed in the articles of incorporation of the corporation.

§ 4. Amendment] That section 423 of the Revised Civil Code of 1903 be amended so as to read as follows:

Section 423. All corporations for profit must issue certificates of stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide. Preferred stock may also be issued, as may be provided in the articles of incorporation, or in the by-laws, and certificates of preferred stock shall be issued as above provided. When property is taken by the corporation in consideration for capital stock of the corporation, the judgment of the board of directors, made in good faith and entered in the minutes of the corporation, shall be conclusive as to the value of such property. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by endorsement by the signature of the proprietor or his attorney or legal representative and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties, by and to whom transferred, the number or designation of the shares, and the date of the transfer.

§ 5. Amendment] That section 435 of the Revised Civil Code of 1903 be amended so as to read as follows:

Section 435. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, shall be valid as a corporate act. An executive committee composed of two or more directors may be appointed by resolution of the board of directors, or such committee may be provided for in the by-laws of the corporation, and such executive committee shall have the same power as the board of directors, but this provision shall not apply to the election of officers of the corporation.

§ 6. Amendment] That section 780 of the Revised Civil Code of 1903 be amended so as to read as follows:

Section 780. Corporations for mining, manufacturing and any other business pursuit may be formed as provided in this code, and such corporations have all the rights, and are subject to all the duties, restrictions and liabilities therein mentioned, so far as the same apply

or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty-five years.

§ 7. Amendment] That section 786 of the Revised Civil Code of 1903 be amended so as to read as follows:

Section 786. Any corporation created under the general incorporation laws of this state may provide in the articles of incorporation for having one or more business offices without this state at any place to be named in the articles of incorporation, and to hold any meetings of the stockholders or directors of the corporation at either of such offices so provided for, but every such corporation having a business office out of this state must have its main office for the transaction of business within this state, to be also designated in such articles.

Approved March 2, 1907.

CHAPTER 105

(S. B. 216)

RELATING TO DISSOLUTION OF CORPORATIONS

AN ACT to Amend Subdivision 2 of Subdivision 3 of Section 446 of Chapter 3 of the Civil Code of 1903, Relating to the Dissolution of Corporations.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That subdivision 2 of subdivision 3 of section 446 of chapter 3 of the Civil Code of 1903 be, and the same is hereby amended to read as follows:

"2. The application must be in writing and must set forth: That at a meeting of the stockholders or members, called for that purpose, the dissolution of the corporation was resolved upon by a vote of not less than two-thirds of the outstanding stock, in stock corporations, or by a vote of not less than two-thirds of the members of other corporations. And that all claims and demands against the corporation have been satisfied and discharged.

§ 2. All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 5, 1907.

CHAPTER 106

(S. B. 252)

PROVIDING FOR THE EXTENSION OF CORPORATION CHARTERS

AN ACT to Amend Section 1 of Chapter 105 of the Session Laws of 1903 Entitled "An Act to Provide for Extension of Corporation Charters."

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. May Extend Corporation Existence] Any corporation existing under the laws of this state may at any time within one year next previous to the expiration of the period for which it was incorporated extend its corporate existence for a period of not more than the period allowed by law for like corporations from the expiration of the period named in its articles of incorporation in the manner hereinafter provided.

Such corporation shall make application to the secretary of state for an extension of its terms of existence, for a term not exceeding the period of existence allowed by law. Said application must be signed by the stockholders owning three-fourths of the capital stock of said corporation and opposite the signature of each stockholder shall be set the number of shares of stock owned by each.

Such application shall be acknowledged in the same manner as articles of incorporation.

Such corporation shall also file with the secretary of state a statement to be verified by oath of the president and secretary of the corporation setting forth:

- (1) The assets and liabilities of the corporation.
- (2) The nature of its business.
- (3) The number of shares of stock issued and outstanding.
- (4) The number of shares of stock subscribed and not issued.
- (5) The name and post office address of each stockholder, and the number of shares owned by each.
- (6) The names and post office addresses of the directors.

Upon filing of the papers designated in this act, and upon payment to him by said corporation of the fee provided by law for filing of articles of incorporation and issuing of charter thereon, the secretary of state shall, if he is satisfied that said corporation is solvent and conducting a lawful business, issue to said corporation a certificate under the seal of the state, stating the period of extension that has been granted and that said corporation has complied with the requirements of this act, and thereupon the corporate existence of said corporation shall be extended for the period named in such certificate and said corporation shall continue to be in all respects the same corporation that it was under its original incorporation, with the same

privileges and immunities and subject to the same liabilities and restrictions except that it shall thereafter be subject to the provisions of the state constitution.

Approved March 3, 1907.

CHAPTER 107

(H. B. 126)

RELATING TO AGRICULTURAL FAIR CORPORATIONS

AN ACT Relating to Agricultural Fair Corporations and Providing for County Aid for the Same.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. County Aid] Any agricultural fair corporation for any county or two or more counties jointly, duly organized under the provisions of article 25, of chapter 3 of the Civil Code of 1903, which shall hold an annual fair or exhibition to promote and encourage agriculture, horticulture, mechanics, manufacturers, stock raising and general domestic industry, shall receive from the county in which such exhibition is held, a sum of money equal to forty (40) per cent of premiums paid for exhibits at such annual fair of the association, provided, that such sum paid by any county, shall not exceed four hundred (\$400) dollars, in any one year. Provided, further, that such county agricultural fair corporation shall not pay in any one year, more than four hundred (\$400) dollars for exhibitions or trials of speed. Such payment shall be made upon the following express conditions:

1. That the secretary shall first file a copy of the articles of incorporation of such agricultural fair corporation with the county auditor, and shall annually before such payment is made file a list of the officers for that year with such county auditor.

2. That the total receipts of such agricultural fair corporation from membership fees, gate receipts and all other sources shall be at least two hundred (\$200) dollars in the year for which such county aid is given.

3. That the sale of intoxicating liquors and all gambling and gambling devices were excluded from the exhibition grounds of such agricultural fair corporation, and the streets and adjacent grounds under its control, during all of the time of its annual fair or exhibition, and no part of such county aid shall be paid until the president and secretary of such agricultural fair corporation shall have filed with the county auditor a sworn statement that such sale of intoxicating liquors and all gambling devices were so prohibited and excluded from the grounds of said agricultural fair corporation, or under its control.

4. That such agricultural fair corporation shall annually publish in some newspaper in the county in which its exhibitions are held, a detailed statement of all its acts as such corporation, giving a list of its officers, the time and place of its meetings, and a statement of its receipts and disbursements for all purposes during the year, and a copy of such statement duly verified by the secretary of such agricultural fair corporation shall be filed with the county auditor. Such payment shall be so made, upon the conditions above set forth, on or before the first day of February in each year, provided, but one such agricultural fair corporation shall receive aid in any one county. And, provided, further, that such agricultural fair shall not be held during the state fair week.

§ 2. Meeting—Quorum] In all meetings of such agricultural fair corporation for the transaction of business the members thereof may appear in person or by proxy, and for the purpose of transacting ordinary business twenty members shall constitute a quorum, but upon any question involving the sale of any real estate belonging to such corporation a majority vote of the members shall assent thereto. Provided, that to meet any deficiency in any year the board of directors may mortgage the real estate of such corporation in any sum necessary to meet such deficiency, not greater than five hundred (\$500) dollars, and any such mortgage shall be executed by the president and secretary of such corporation.

§ 3. Repeal] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 5, 1907.

CHAPTER 108

(H. B. 157)

RELATING TO MISREPRESENTATIONS OF STOCKS AND BONDS OF CORPORATIONS

AN ACT Entitled an Act to Provide Penalties for Fraudulent Representations Relating to the Stocks or Bonds of Incorporated Companies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Misrepresentation—Penalty] Any superintendent, director, secretary, manager, agent, or other officer of any corporation formed or existing under the laws of this state or transacting business in the same, and any person pretending or holding himself out as such superintendent, director, secretary, manager, agent or other officer who shall willfully subscribe, sign, endorse, verify, or otherwise assent to the publication, either generally or privately, to the stockhold-

ers or other persons dealing with such corporation or its stock knowing the same to be untrue or willfully and fraudulently issues exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures or prospects or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporation a greater value or less apparent or market value than they really possess, or with the intention of defrauding any particular person or persons, or the public, or persons generally, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in state prison, or a county jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 109

(H. B. 290)

RELATING TO TRUST COMPANIES

AN ACT Entitled an Act to Amend Chapter Seventy-four (74) of the Session Laws of 1905, Relating to Trust Companies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section one (1) of chapter seventy four (74) of the Session Laws of 1905, be and the same is hereby amended to read as follows:

Section 1. Trust Companies—How Formed] Any association for the purpose of carrying on the business of a trust company may be formed by any number of natural persons not less than five (5), one-third of whom shall be residents of this state; hereafter no corporation shall be organized for the purpose of carrying on a trust company business in this state except under this act and no company, persons, or association shall hereafter use the word "Trust" as a part of its name.

§ 2. That the first and second subdivision of section four (4) of said chapter seventy-four (74) of the Session Laws of 1905, be and the same are hereby amended to read as follows:

First—To be appointed assignee or trustee by deed and executor, guardian or trustee by will, and such appointment shall be of like force as in cases of appointment of a natural person.

Second—To be appointed receiver, assignee, guardian, conservator, executor, administrator or other trustee by any court of record

in this state, and it shall be lawful for such court to appoint such corporation as such receiver, assignee, guardian, conservator, executor, administrator or other trustee in the manner provided by law for the appointment of any natural person to such trust; provided, any such appointment as guardian or conservator shall apply to the estate only and not to the person.

§ 3. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 5, 1907.

CHAPTER 110

(H. B. 299)

RELATING TO DEPOSIT OF SECURITIES WITH STATE TREASURER

AN ACT Entitled an Act to Amend Section Two, of Chapter 73, of the Session Laws of 1905, Relating to Deposit of Securities with State Treasurer.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Deposit of Securities with State Treasurer] That section two of chapter 73 of the Session Laws of 1905 be and the same is hereby amended to read as follows:

Section 2. No such corporation shall transact any business in this state nor issue any bond, undertaking, certificate of employers' liability or burglary insurance, certificate of title, nor act as trustee or hold any position of trust, until it shall have deposited with the state treasurer a guaranty fund, consisting of bonds of the United States or of this state, or of counties, municipalities or school districts of this state, or first mortgage security on real estate situated in this state, worth at least double the amount of mortgages, which deposit of securities in the aggregate, exclusive of interest, shall be at least twenty thousand dollars, such bonds and securities to be approved by the state treasurer and held in trust by him for the faithful performance and payment of the obligations of such corporation. It shall be the duty of the state treasurer to examine into and determine the true value of all securities so deposited in his office and any and all expenses incurred by the state treasurer in estimating such values shall be paid to him by the companies depositing such securities. The state treasurer shall immediately after making any such examination, make out an itemized, verified statement of the actual expense of such examination, and forward the same to the company depositing such securities. The company shall forthwith, and before the approval or rejection of such securities, remit to the state treasurer the amount of such verified statement. Such corporations shall have the right at

any time to exchange such securities so deposited by substituting for those withdrawn a like amount in other securities of the character provided for by this section, and the state treasurer shall permit such corporations to collect the interest accruing on such securities so deposited, delivering to them or their duly authorized agents the coupons or other evidences of interest, as the same shall become due. Should the said deposited securities or any part thereof be used for the payment of any of the obligations of such corporation, under process of any court, or should any of the securities be paid or become impaired in value from any cause, such corporation shall forthwith, upon ten days notice from the insurance commissioner or such further time as the commissioner may allow, deposit further and additional securities, as above provided, with the state treasurer, to make up the full amount of such deposit as hereinbefore provided, in default of which the certificate of authority to transact business in this state may be revoked as hereinafter provided.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1907.

COURTS

CHAPTER 111

(H. B. 188)

FIXING TERMS OF COURT IN THE FIRST JUDICIAL CIRCUIT

AN ACT Entitled an Act Amending Section 653 of the Revised Political Code of 1903, Relating to Terms of Court for the First Judicial Circuit.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Terms—When Held] That section 653 of the Revised Political Code of 1903, be and the same is hereby amended to read as follows:

Section 653. The first judicial circuit consists of the counties of Clay, Yankton, Turner, Bon Homme, Hutchinson, Charles Mix, Douglas, Gregory, Tripp and Meyer, and terms of the circuit court shall be held annually in each of the counties of such circuit as follows: In Clay county, on the first Tuesday in April and second Tuesday in October; in Yankton county on the second Tuesday in

March and November; in Turner county, on the second Tuesday in February and September; in Bon Homme county, on the first Tuesday of May and December; in Hutchinson county, on the third Tuesday of May and the fourth Tuesday of October; in Douglas county, on the second Tuesday in May and the fourth Tuesday in November; in Charles Mix county, on the first Tuesday in June and the second Tuesday in January; and in Gregory county, on the fourth Tuesday in April and September.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] Whereas an emergency exists, this act shall be in force from and after its passage and approval.

Approved March 4, 1907.

CHAPTER 112

(H. B. 236)

FIXING TERMS OF COURT IN THE FOURTH JUDICIAL CIRCUIT

AN ACT to Fix the Terms of Court in the Counties of the Fourth Judicial Circuit.

Be it Enacted by the Legislature of the State of South Dakota:

First. Terms of Court—When Held] That terms of the circuit court shall be held in each of the counties comprising the Fourth Judicial Circuit as follows:

Aurora, the third Tuesday in February and the first Tuesday in October.

Davison, the second Tuesday in April and the third Tuesday in November.

Lyman, the fourth Tuesday in April and the second Tuesday in December.

Buffalo, the second Tuesday in May.

Jerauld, the third Tuesday in May and the third Tuesday in September.

Sanborn, the fourth Tuesday in May and the first Tuesday in January.

Hanson, the second Monday in June and the first Monday in February.

Brule, the third Tuesday in June and the third Tuesday in January.

Second. In Effect When] That this act shall be in full force and effect from and after the first day of July, 1907.

Third. Repeal] All acts and parts of acts fixing terms of court in the counties of the Fourth Judicial Circuit are hereby repealed.
Approved March 1, 1907.

CHAPTER 113

(H. B. 113)

FIXING TERMS OF COURT IN THE SIXTH JUDICIAL CIRCUIT

AN ACT Fixing Terms of Court in the Sixth Judicial Circuit.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Terms—When Held] The circuit court of the sixth judicial circuit, shall, in each year hold terms of court in each of the counties comprising said circuit, as follows:

Hughes county, on the second Tuesday in May and November.

Hyde county, on the fourth Tuesday in November and the second Tuesday in March.

Hand county, on the third Tuesday in April and September.

Sully county, on the first Tuesday in March and September.

Potter county, on the third Tuesday in October and the fourth Tuesday in March.

Edmunds county, on the first Tuesday in June and the second Tuesday in December.

McPherson county, on the second Tuesday in June and the third Tuesday in December.

Walworth county, on the second Tuesday in January and the first Tuesday in July.

Campbell county, on the fourth Tuesday in June.

Faulk county, on the third Tuesday in June and the first Monday in December.

Stanley county, on the third Monday in January and July.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] Whereas, an emergency exists, this act shall be in force from and after its approval.

Approved March 4, 1907.

CHAPTER 114

(S. B. 270)

FIXING TERMS OF COURT IN THE NINTH JUDICIAL CIRCUIT

AN ACT Fixing the Terms of the Circuit Court Within and for the Ninth Judicial Circuit.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Terms of Court—When Held] The circuit court of the ninth judicial circuit shall annually hold terms of court in each of the counties comprising said circuit as follows:

Beadle county on the second Tuesday in June and the second Tuesday in December; Miner county on the fourth Tuesday in April and the first Tuesday in October; Spink county on the second Tuesday in May and the second Tuesday in November; Kingsbury county on the second Tuesday in March and the third Tuesday in October.

§ 2. Repeal] All acts or parts of acts in conflict with this act, including the act approved February 15th, 1907, are hereby repealed. Approved March 9, 1907.

CHAPTER 115

(S. B. 37)

FIXING TERMS OF COURT IN THE NINTH JUDICIAL CIRCUIT

AN ACT to Amend Section 2, Chapter 114 of the Session Laws of 1903, Relating to the Time for Holding Terms of Court in the Ninth Judicial Circuit.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 2, Chapter 114 of the Session Laws of 1903 be amended, and the same is hereby amended so as to read as follows:

The circuit court of the Ninth judicial circuit shall hold terms of court in each of the counties comprising said circuit as follows:

Spink county on the second Tuesday in April and the second Tuesday in October; Miner county on the first Tuesday in May and the first Tuesday in November; Kingsbury county on the third Tuesday in May and the third Tuesday in November; Beadle county on the first Tuesday in June and the first Tuesday in December.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 15, 1907.

CHAPTER 116

(S. B. 130)

RELATING TO THE MANNER OF COMMENCING CIVIL ACTIONS

AN ACT Entitled an Act to Amend the Code of Civil Procedure of the Revised Code of South Dakota, 1903, Relating to the Manner of Commencing Civil Actions, to the Pleadings in Civil Actions and to Provisional Remedies in Civil Actions.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 108 of the Code of Civil Procedure of the Revised Code of South Dakota, 1903, be amended so as to read as follows:

Section 108. In an action affecting the title to real property the plaintiff at the time of filing the complaint, or at any time afterwards, or whenever a warrant of attachment of property shall be issued, or at any time afterwards, the plaintiff, or defendant when he sets up an affirmative cause of action in his answer and demands substantive relief at the time of filing his answer or at any time afterwards, if the same be intended to affect real property, may file for record with the register of deeds of each county in which the real property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the real property in that county affected thereby; from the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby, but if the action be for the foreclosure of a mortgage or the enforcement of a mechanic's or miner's lien no such notice need be filed, and every person whose conveyance or incumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or incumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice; provided, however, that such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof, on a defendant within sixty days after such filing. And the court in which the said action was commenced may at any time, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized by this section to be canceled of record, in whole or in part, by the register of deeds of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record, which shall

refer to the order and for which the register of deeds shall be entitled to a fee of twenty-five cents.

Kohn vs. Lapham, 13 S. D. 78; Ruth vs. Wells, 13 S. D. 482; McCauley vs. Speed, 12 S. D. 7; Smith vs. Gale, 144 U. S. 509; Bateman vs. Backus, 4 D. Buxton vs. Sargent, 7 N. D. 503.

§ 2. Amendment] That the Code of Civil Procedure and Revised Code of South Dakota, 1903, be amended by adding thereto immediately after section 108 of said code, the following section numbered from 109 to 205, both inclusive, to-wit:

Cancellation of
lis pendens.

s. 1, c. 136, 1895.

Section 109. Whenever notice of the pendency of any action has been filed or recorded in the office of the register of deeds of any county the party plaintiff or defendant filing the same, or his attorney whose instance the same was filed, or his attorney or attorneys whose name or names the notice is subscribed may discharge the same of record:

1. By endorsing upon the margin or at the foot of the page of the record where the same is recorded a certificate of the discharge thereof, signed by such party or his attorney aforesaid and acknowledged before the register of deeds or his deputy, in the same manner as is provided by law for the satisfactions of real estate mortgages. In case of notices signed in the firm name of attorneys, the discharge shall be signed in the same manner and may be acknowledged by any member of such firm, and if more than one attorney or firm of attorneys shall have subscribed the notice, the acknowledgment of any one of such attorneys shall be sufficient.

2. By filing with the register of deeds in whose office the notice is filed a certificate of the discharge of said notice, executed and acknowledged by the same persons as is above provided for certificates of discharge thereof. Such certificates of discharge, when filed with the register of deeds, shall be acknowledged in the same form as is provided by law for the acknowledgment of conveyances of real estate and may be recorded in like manner.

s. 2, c. 136, 1895.

The register of deeds shall be entitled to receive the same fee for the discharge of notices of lis pendens under this section as are provided for the satisfaction of mortgages similarly discharged.

Summons shall
be served, how.

s. 1, c. 37, 1881.
C. L. § 4898.
c. 68, 1895.

Sec. 110. The summons shall be served by delivering a copy thereof as follows:

1. If the action be against a private corporation to the president or other head of the corporation, secretary, cashier, treasurer, or managing agent thereof; but such service can be made in respect to a foreign corporation only when it has property in this state or the cause of action arose therein, or when such service shall be made within this state personally upon the president, treasurer, secretary or duly authorized agent thereof.

2. In an action against a railroad corporation, or against a partnership, firm or corporation operating elevators and warehouses in this state wherein and whereat grain is purchased, received or handled

tion to the service provided in subdivisions 1 and 6 of this section to any acting ticket, station or freight agent of such railroad company, or to any acting agent in charge of any elevator or water-operated by such person, firm or corporation in the county or division where the action or proceeding is commenced.

If the action be against a public corporation within this state, to the mayor or any of the aldermen of any city, to any of the commissioners of the county, to the president or any of the trustees of any incorporated town, to any of the supervisors of an organized township, to any of the members of the school district board. If against a minor under the age of fourteen years, to such minor, personally, or to his father, mother or guardian, or if there be none within the state then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed.

If against a person judicially declared to be of unsound mind incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a guardian has been appointed, to such guardian and to the defendant personally.

5. In all other cases to the defendant personally, and if the defendant cannot conveniently be found, by leaving a copy thereof at his dwelling house in the presence of one or more of the members of his family, over the age of fourteen years, or if the defendant reside in the city of another with one of the members of the family in which resides over the age of fourteen years. Service made in any of the modes provided in this section shall be taken and held to be perfect service, and all writs, process, or orders issued by any of the judges of this state, or by the judges thereof, in an action or proceeding, shall be served in the manner and upon the persons or persons mentioned in this section, and none other, except in cases where the service of papers can be made upon an attorney after appearance as provided by the Code of Civil Procedure.

Massillon Co. vs. Hubbard, 11 S. D. 325; *Mars vs. Oro Fino Co.*, 7 S. D. 605; *Foster Lumber Co.*, 5 S. D. 57.

Sec. 111. The summons may be served by the sheriff of the county where the defendant may be found or by any other person a party to the action. The service shall be made and the summons returned with proof of the service to the person whose name is prescribed thereto, with all reasonable diligence. The persons subscribing the summons may, at his option, by an indorsement on the summons, fix a time for the service thereof, and the service shall then be made accordingly; provided, however, that whenever any summons or other process shall be served by any person other than a sheriff or his duly appointed deputy, no fee shall be allowed therefor, nor for mileage and traveling, or making such service, or for serving summons or process.

Retzell vs. Deffebach, 6 S. D. 21.

Summons shall be served, by whom.

s. 103, Civ. Proc.
s. 1, c. 35, sp.
1883.
s. 1, c. 138, 1885
C. L. § 4899.

Service of
summons by
publication.

s. 104, Civ. Proc.
C. L. § 4900.

Sec. 112. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the state, and that fact appears by affidavit to the satisfaction of the court or a judge thereof, and it in like manner appears that an action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to real property in this state, such court or judge may grant an order that the service be made by the publication of a summons in any of the following cases:

1. Where the defendant is a foreign corporation having no property within the state or the cause of action arose therein.
2. Where the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent.
3. Where he is not a resident of this state, but has property therein, and the court has jurisdiction of the subject of the action.
4. Where the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, or contingent therein, or the relief demanded consists wholly or in part in excluding the defendant from any interest or lien therein.
5. Where the action is for divorce or for a decree annulling a marriage.

The order must direct the publication to be made in some newspaper to be designated as most likely to give notice to the person served, and for such lengths of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication the court or judge must also direct a copy of the summons and complaint to be forthwith deposited in the postoffice, directed to the person served, at his place of residence, unless it appear that such residence is neither known to the party making the application, nor can it be ascertained by him. When publication is ordered, the publication of a copy of the summons and complaint out of the state is equivalent to publication and deposit in the postoffice. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown at any time before judgment must be allowed to defend the action, and in an action for divorce, the defendant against whom publication is ordered, or his representatives, may, in like manner, if a good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof, and within seven years after its rendition on such terms as may be just, and if the defense is successful and the judgment or any part thereof has been collected or otherwise enforced, such restitution may thereupon be compelled if the court directs, but the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected. And

es where publication is made the complaint must be first filed
 e summons as published must state the time and place of such
 In actions for the foreclosure of mortgages on real estate
 y instituted or hereafter to be instituted, if any party or par-
 aving any interest in or lien upon such mortgaged premises are
 wn to the plaintiff and the residence of such party or parties
 t with reasonable diligence be ascertained by him and such
 shall be made to appear by affidavit to the court or to a justice
 of, such court or justice may grant an order that the summons
 rved on such unknown party or parties by publishing the same
 k weeks, once in each week successively, in a newspaper printed
 county where the premises are situated, provided a paper be
 hed in such county, and if no paper be published in the county
 n a paper published nearest the county seat of such county in
 ate, which publication shall be equivalent to a personal service
 ch unknown party or parties.

oods vs. Pollard, 14 S. D. 44; Plummer vs. Blair, 12 S. D. 23; Bothell vs.
 arth, 10 S. D. 491; Davis vs. Cook, 9 S. D. 319; Bank vs. Jacobson, 8 S. D.
 cloughlin vs. Wheeler, 2 S. D. 379; Beach vs. Beach, 6 Dak. 371; Star vs.
 4 Dak. 213; Smith vs. Nicholson, 5 N. D. 426; Yorke vs. Yorke, 3 N. D. 343.

Sec. 113. Where the action is against two or more defendants
 the summons is served on one or more but not on all of them
 a plaintiff may proceed as follows:

1. If the action be against defendants jointly indebted upon con-
 he may proceed against the defendant served unless the court
 wise direct, and if he recover judgment it may be entered against
 e defendants thus jointly indebted so far only as that it may be
 ced against the joint property of all and the separate property of
 e defendants served, and if they are subject to arrest against the
 ns of the defendants served; or,

2. If the action be against defendants severally liable he may
 ed against the defendants served in the same manner as if they
 the only defendants.

3. If all the defendants have been served judgment may be taken
 st any or either of them severally when the plaintiff would be
 ed to judgment against such defendant or defendants if the ac-
 had been against them or any of them alone.

4. If the name of one or more partners shall for any cause have
 omitted in any action in which judgment shall have passed
 st the defendants named in the summons, and such omissions
 not have been pleaded in such action the plaintiff in case the
 ment therein shall remain unsatisfied may by action recover of
 partner separately upon proving his joint liability, notwithstand-
 ne may not have been named in the original action, but the plain-
 shall have satisfaction of only one judgment rendered for the same
 e of action.

uster Co. vs. Alblen, 7 S. D. 482; Bank vs. Kellogg, 4 S. D. 312; Ross vs.
 e, 4 S. D. 584; Clark vs. Sullivan, 2 N. D. 103.

Action against
 joint and sever-
 al debtors.
 Summons how
 served.

§. 105, Civ. Proc.
 C. L. 4901.

Service is complete, when.

c. 66, 1895.
C. L. 4902.

Proof of service—acceptance.

s. 107 Civ. Proc.
s. 1, c. 125, 1885.
C. L. 4903.

Jurisdiction—voluntary appearance.

s. 108 Civ. Proc.
C. L. § 4904.

Forms of pleading abolished.

s. 109 Civ. Proc.
C. L. 4905.

Complaint.

s. 110 Civ. Proc.
C. L. 4906.

Complaint, shall contain—what.

s. 111 Civ. Proc.
C. L. § 4907.

Sec. 114. In the cases mentioned in section 112 of this code service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication. Provided, however, that in case of personal service of the summons and complaint on a defendant out of this state such service shall be deemed complete at the time when the summons and complaint are served.

Sec. 115. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

1. If served by the sheriff or other officer, his certificate of service, or,
2. If by any other person, his affidavit thereof; or,
3. In case of publication, the affidavit of the printer, or the principal clerk, showing the same, and an affidavit of deposit of a copy of the summons in the post office, as required by law, if the same shall have been deposited; or,
4. The written admissions of the defendant. In case of admission otherwise than by publication the certificate, affidavit or admission must state the time, place and manner of service.

Sec. 116. From the time of service of the summons in an action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is deemed consent to personal service of the summons upon him.

Ramsdell vs. Duxberry, 14 S. D. 222; *Brettell vs. Deffebach*, 6 S. D. 222; *Sundback*, 5 S. D. 31; *Williams vs. Neth*, 4 Dak. 360.

CHAPTER 10

Of Pleadings in Civil Actions

Article 1—The Complaint

Sec. 117. All forms of pleading heretofore existing are abolished, and hereafter, the forms of pleading in civil actions in courts of this state, and the rules by which the efficiency of the pleadings is to be determined, are those prescribed by this code.

Sec. 118. The first pleading on the part of the plaintiff shall be a complaint.

Sec. 119. The complaint shall contain:

1. The title of the cause specifying the name of the county in which the action is brought, the name of county in which the plaintiff desires the trial to be had, and the names of the parties to the action, plaintiff and defendant.
2. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.
3. A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated.

McCormack vs. Phillips, 4 Dak. 506; *Busta vs. Wardall*, 3 S. D. 141; *Austin Co. vs. Siglinger*, 2 S. D. 442; *Clay Co. vs. Simonsen*, 2 Dak. 112; *Bank vs. Deffebach*, 13 S. D. 365; *Van Brunt vs. Harrigan*, 8 S. D. 96.

Article 2.—The Demurrer.

Sec. 120. The only pleading on the part of defendant is either demurrer or an answer. It must be served within thirty days after service of the copy of the complaint.

Defendant may demur or answer.

s. 112 Civ. Proc. C. L. § 4908.

Sec. 121. The defendant may demur to the complaint when it does not appear upon the face thereof, either:

When defendant may demur.

That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

s. 113 Civ. Proc. C. L. § 4909.

That the plaintiff has not legal capacity to sue; or,

That there is another action pending between the same parties for the same cause; or,

That there is a defect of parties, plaintiff or defendant; or,

That several causes of action have been improperly united;

5. That the complaint does not state facts sufficient to constitute a cause of action.

Sec. 122. The demurrer shall distinctly specify the grounds of objection to the complaint. Unless it do so, it may be disregarded. Objection may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

Requisites of a demurrer.

s. 114 Civ. Proc. C. L. § 4910.

Other vs. Dunn, 11 S. D. 196; Evans vs. Fall River Co., 9 S. D. 130; Hill vs. 6 S. D. 421; Hudson vs. Archer, 4 S. D. 128; State vs. Ry. Co., 4 S. D. 261; Van Co vs. Moore, 2 Dak. 280.

Sec. 123. If the complaint be amended, a copy thereof must be served on the defendant, who must answer it within thirty days, or the plaintiff, upon filing with the clerk, on due proof of the service, if of the defendants' omission, may proceed to obtain judgment, as provided by section 227, but where an application to the court for amendment is necessary, ten days' notice thereof must be given to the defendant.

If complaint is amended.

s. 115 Civ. Proc. C. L. § 4911.

Sec. 124. When any of the matters enumerated in section 121 of this code do not appear upon the face of the complaint, the objection may be taken by answer.

When defendant shall answer.

s. 116 Civ. Proc. C. L. § 4912.

Sec. 125. If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Objection waived.

s. 117 Civ. Proc. C. L. § 4913.

Other vs. Walt, 4 S. D. 584; Nelson vs. Ladd, 4 S. D. 1; Heegaard vs. Trust Co., 1 S. D. 569; Porter vs. Booth, 1 S. D. 558; Bank vs. Purchase, 9 N. D. 280.

Article 3.—The Answer.

Sec. 126. The answer of the defendant must contain:

1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

Requisites of answer.

s. 118 Civ. Proc. C. L. § 4914.

2. A statement of any new matter constituting a defense to the counterclaim, in ordinary and concise language without repetition. *Hardy vs. Purlington*, 6 S. D. 382; *Laney vs. Ingalls*, 5 S. D. 183; *Cumins vs. Lawrence County*, 2 S. D. 452; *Cumins vs. Lawrence County*, 1 S. D. 158; *St. vs. Bank*, 4 N. D. 164; *Russell vs. Amundson*, 4 N. D. 112.

Requisites of counterclaim.

s. 119 Civ. Proc.
C. L. § 4915.

Sec. 127. The counterclaim mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, connected with the subject of the action.

2. In an action arising on contract, any other cause of action arising also on contract and existing at the commencement of the action. The defendant may set forth by answer as many defenses and counterclaims as he may have, whether they be such as have heretofore denominated legal or equitable, or both. They must be separately stated, and refer to the causes of action which they are intended to answer, in such manner that they may be intelligibly distinguished.

Thresher Co. vs. Darnell, 13 S. D. 279; *Thresher Co. vs. Schaack*, 10 S. D. 550; *Kirby vs. Jamlson*, 9 S. D. 8; *Bank vs. Feeny*, 9 S. D. 550.

McHard vs. Williams, 8 S. D. 381; *Lawrence vs. Peck*, 3 S. D. 645; *McHard vs. Sunback*, 3 S. D. 106; *Stebbins vs. Lardner*, 2 S. D. 127; *Schuster vs. Thresher Co.*, 6 Dak. 10.

Sec. 128. The defendant may demur to one or more of the causes of action stated in the complaint, and answer the residue.

Sec. 129. Sham and irrelevant answers and defenses must be stricken out on motion, and upon such terms as the courts may in their discretion impose.

King vs. Walte, 10 S. D. 1; *Green vs. School Twp.*, 5 S. D. 452; *Loran Mining Co.*, 6 S. D. 478; *Woodenware Co. vs. Jensen*, 4 Dak. 149; *Gjerstad vs. Hartzell*, 8 N. D. 424.

Article 4.—The Reply.

Sec. 130. When the answer contains new matter constituting a defense to the counterclaim, the plaintiff may, within thirty days, reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to sustain a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer; and the plaintiff may in all cases demur to an answer containing new matter, where, upon its face, it does not constitute a counterclaim or defense, and the plaintiff may demur to one or more of such defenses or counterclaims, and reply to the residue of the counterclaims. In other cases, when an answer contains new matter constituting a defense by way of avoidance, the court may, in its discretion, order

Demurrer and answer.

s. 120 Civ. Proc.
C. L. § 4916.
Sham defenses

s. 121 Civ. Proc.
C. L. § 4917.

Reply made when—Demurrer to the answer.

s. 122 Civ. Proc.
C. L. § 4918.

defendant's motion, require a reply to such new matter; and in that the reply shall be subject to the same rules as reply to a counterclaim.

Arnwall vs. McKinney, 9. S. D. 213; *Star Co. vs. Matthieson*, 3 Dak. 233; *Lum vs. Keefe*, 6 Dak. 160-167; *Van Dyke vs. Doherty*, 6 N. D. 263.

Sec. 131. If the answer contain a statement of new matter containing a counterclaim, and the plaintiff fail to reply or demur therein within the time prescribed by law, the defendant may move, on a day of not less than ten days, for such judgment as he is entitled to on such statement, and if the case require it, a writ of inquiry of damages may be issued.

Shaner vs. Shepard, 5 N. D. 56.

Sec. 132. If a reply of the plaintiff to any defense set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

Judgment on the answer when no reply.

s. 123 Civ. Proc. C. L. § 4919.

Demurrer to reply.

s. 124 Civ. Proc. C. L. § 4920.

Article 5.—General Rules of Pleading.

Sec. 133. Every pleading in a court of record must be subscribed by the party or his attorney; and when any pleading is verified every subsequent pleading, except a demurrer, must be verified.

Pleadings must be subscribed and verified.

s. 125 Civ. Proc. C. L. § 4921.

Sec. 134. The verifications must be to the effect that the same are to the knowledge of the person making it, except as to those matters stated upon information and belief, and as to those matters he believes it to be true, except where it is made by any person other than a party to the action, in which case it must be to the effect that the same is true to the best knowledge, information and belief of the person making it; and such verification must be by the affidavit of a party, or if there be several parties united in interest and pleading together, by one at least of such parties acquainted with the facts, if the party be within the county where the attorney resides and capable of making the affidavit. The affidavit may also be made by the party or attorney if the party is absent from the county in which the attorney resides, or is not a resident thereof; and when the pleading is verified by any other person than the party he shall set forth in the affidavit the reasons why it is not made by the party. If a corporation is a party the verification may be made by an officer thereof; and when the state or any officer thereof in its behalf is a party, the verification may be made by any person acquainted with the facts. The verification may be admitted when an admission of the truth of the allegation might subject the party to criminal prosecution for felony, and no pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in such pleading.

Verification must be what.

s. 1. c. 149, 1885. C. L. § 4922.

Sec. 135. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall demand thereof of the adverse party, within ten days after the demand thereof

Statement of account.

s. 127 Civ. Proc. C. L. § 4923.

in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney, within the personal knowledge of such agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a "verified account," when the one delivered is defective; and the court may in all cases order a bill of particulars of the claim of either party to be furnished.

Liberal construction.

s. 128 Civ. Proc.
C. L. § 4924.

Pleadings made definite.

s. 129 Civ. Proc.
C. L. § 4925.

Pleading a judgment—how.

s. 130 Civ. Proc.
C. L. § 4926.

Pleading the performance of condition precedent.

s. 131 Civ. Proc.
C. L. § 4927.

Pleading private statute.

s. 132 Civ. Proc.
C. L. § 4928.

Pleading in action for libel or slander.

s. 133 Civ. Proc.
C. L. § 4929.

Sec. 136. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed with a view of substantial justice between the parties.

Hot Springs Co. vs. Ferguson, 8 S. D. 534; *Stutsman Co. vs. Mansfield*, 178-85.

Sec. 137. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby. And when the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite by amendment.

Sec. 138. In pleading a judgment, or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

Sec. 139. In pleading the performance of conditions precedent to a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegations be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defense founded upon an instrument for the payment of money only, it shall be sufficient for a party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specified sum, which he claims.

DeFord vs. Hyde, 10 S. D. 386; *Scott vs. Esterbrooks*, 6 S. D. 253; *Andrews vs. Wynn*, 4 S. D. 40.

Sec. 140. In pleading a private statute, or a right derived from a statute, it shall be sufficient to refer to such statute, by its title and date of its passage, and the court shall thereupon take judicial notice thereof.

Sec. 141. In an action for libel or slander, it shall not be necessary to state in the complaint any intrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted, the plaintiff shall be bound to establish, on trial, that it was so published or spoken.

Sec. 142. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damages; and whether he prove justification or not, he may in evidence, the mitigating circumstances.

Wyers vs. Longstaff, 14 S. D. 98.

Sec. 143. In an action to recover the possession of property dispossessed by doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property dispossessed was at the time doing damage thereon, shall be good, without averring forth the title to such real property.

Sec. 144. The plaintiff may unite in the same complaint several causes of action, whether they be such as have been heretofore designated legal or equitable, or both, where they all arise out of:

1. The same transaction, or transactions connected with the same subject of action.
2. Contract, express or implied; or,
3. Injuries, with or without force, to person and property, or contract; or,
4. Injuries to character; or,
5. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same, or waste committed thereon; or,
6. Claims to recover personal property, with or without damages for the withholding thereof; or,
7. Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action, so united, must all belong to one of the classes, and, except in actions for the foreclosure of mortgages, must affect all the parties to the action, and not require different modes of trial, and must be separately stated. In actions to foreclose mortgages, the court shall have power to adjudge and direct payment, by the mortgagor, of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage; and if the mortgage debt be secured by a covenant or obligation of any person other than the mortgagor, the plaintiff may make such person a party to the action, and the court may adjudge payment of the residue of such debt remaining unsatisfied, after a sale of the mortgaged premises against such other person, and may enforce such judgment as in other cases.

Tripp vs. Yankton, 10 S. D. 516; *Bush vs. Froelick*, 8 S. D. 353; *Aultman Co. vs. Guson*, 8 S. D. 458; *Austin Co. vs. Helser*, 6 S. D. 429; *Mares vs. Wormington*, 8 S. D. 329; *Campbell vs. Trust Co.*, 14 S. D. 483; *Jasper vs. Hazen*, 2 N. D. 401.

Defendant's answer.

s. 134 Civ. Proc. C. L. § 4930.

Answer of possession in action to recover.

s. 135 Civ. Proc. C. L. § 4931.

Joinder of causes of action.

s. 136 Civ. Proc. C. L. § 4932.

Allegations—
What are
deemed true and
what are denied.

s. 137 Civ. Proc.
C. L. § 4933.

Sec. 145. Every material allegation of the complaint not controverted by the answer as prescribed in section 126 of this code, every material allegation of new matter in the answer, constituting a counterclaim, not controverted by the reply, as prescribed in section 130 of this code, shall, for the purposes of the action, be taken as true. But the allegation of new matter in the answer, not relating to a counterclaim, or of new matter in a reply, is to be deemed controverted by the adverse party upon a direct denial or avoidance, as the case may require.

Wyman vs. Werner, 14 S. D. 300.

Article 6.—Mistakes in Pleading, and Amendments.

Variance between pleading and proof not material unless misleading.

s. 138 Civ. Proc.
C. L. § 4934.

Sec. 146. No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party to his prejudice, in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been misled, the fact shall be proved to the satisfaction of the court, in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as shall be just.

Hermiston vs. Green, 11 S. D. 81; Bruce vs. Doble, 3 S. D. 416; North Star vs. Stebbins, 3 S. D. 540.

If not material.

s. 139 Civ. Proc.
C. L. § 4935.

Sec. 147. Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without cost.

Failure of proof.

s. 140 Civ. Proc.
C. L. § 4936.

Sec. 148. Where, however, the allegation of the cause of action is a defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance, within the last two sections, but a failure of proof.

Amendments made to pleadings—when and how.

s. 141 Civ. Proc.
C. L. § 4937.

Sec. 149. Any pleading may be once amended by the party, without costs, and without prejudice to the proceedings already had, at any time within twenty days after it is served, or at any time before the period for answering it expires; or it can be so amended at any time within twenty days after the service of the answer or demurrer to such pleading, unless it be made to appear to the court that it was done for the purpose of delay, and the plaintiff or defendant will thereby lose the benefit of a term for which the cause is set for trial; and if it appear to the court that such amendment was made for such purpose, the same may be stricken out, and such terms imposed as to the court may seem just. In such case a copy of the amended pleading must be served on the adverse party. After the decision of a demurrer, either at a general or special term, the court may, in its discretion, if it appear that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just. If the demurrer be allowed for the cause mentioned in the fifth subdivision of section 121 of this code, the court may, in its discretion, and upon such terms as may be just, order the action

divided into as many actions as may be necessary to the proper termination of the causes of action therein mentioned.

Tripp vs. Yankton, 10 S. D. 516.

Sec. 150. The court may, before or after judgment, in furtherance of justice, and on such terms as may be proper amend any pleading, process, or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; or by inserting other allegations material to the case, or when the amendment does not change substantially the claim or defense by conforming the pleading or proceeding to the facts proved, or to facts in support of which proof is offered. Provided, that no amendment on the trial of an action shall be cause for a continuance, unless it shall appear to the satisfaction of the court that the party applying therefor is surprised by the amendment and unable to safely proceed with the trial.

Chaffee vs. Runkle, 11 S. D. 333; *Haggarty vs. Strong*, 10 S. D. 585; *Harrington vs. Wilson*, 10 S. D. 606; *Martin vs. Bank*, 7 S. D. 263; *Johnson vs. Burnside*, 3 S. D. 10; *Heegaard vs. Trust Co.*, 3 S. D. 569; *Kelsey vs. Ry. Co.*, 1 S. D. 80; *Noonan vs. M. Co.*, 121 U. S. 393; *Hedlun vs. Mining Co.*, 14 S. D. 369; *Whittaker vs. Ren*, 14 S. D. 611; *Bigelow vs. Draper*, 6 N. D. 152.

Sec. 151. The court may likewise, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or an act to be done, after the time limited by this code, or, by an order, enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect, and may supply an omission in any proceeding; and whenever any proceeding taken by a party fails to conform in any respect to the provisions of this code, the court may, in like manner, and on like terms, permit an amendment of such proceedings, so as to make it conformable thereto.

Garlock vs. Calkins, 14 S. D. 90; *Bank vs. Hurley*, 13 S. D. 18; *In re Seydel's estate*, 14 S. D. 115; *Bunker vs. Taylor*, 10 S. D. 526; *Searles vs. Christensen*, 5 S. D. 150; *Pettigrew vs. Sioux Falls*, 5 S. D. 646; *Evans vs. Fall River Co.*, 4 S. D. 1; *Weber vs. Tschetter*, 1 S. D. 205; *Griswold Co. vs. Lee*, 1 S. D. 531; *Warder vs. Peterson*, 6 Dak. 83; *Yerkes vs. McHenry*, 6 Dak. 5; 144 U. S. 211; *Kirschner vs. Schner*, 7 N. D. 291; *Sargent vs. Kindred*, 5 N. D. 472; *Ganthier vs. Rusicka*, 3 D. 1.

Sec. 152. When the plaintiff shall be ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered the pleading or proceeding may be amended accordingly.

Sec. 153. The court shall, in every stage of action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

Twine Co. vs. Wright, 11 S. D. 521.

Sec. 154. The plaintiff and defendant respectively, may be allowed, on motion, to make a supplemental complaint, answer, or reply, alleging facts material to the case, occurring after the former

Court may amend pleadings.

C. L. § 4938.
c. 54. 1897.

Court may allow pleading after time limited by law.

s. 143 Civ. Proc.
C. L. § 4939.

Defendant's name unknown

s. 144 Civ. Proc.
C. L. § 4940.

Trivial defects in pleadings disregarded.

s. 145 Civ. Proc.
C. L. § 4941.

Supplemental pleadings.

s. 146 Civ. Proc.
C. L. § 4942.

complaint, answer, or reply, or of which the party was ignorant at his former pleading was made.

Kirby vs. Muench, 12 S. D. 616; Schouweiler vs. Hough, 7 S. D. 163; Bar Dickinson Co., 6 N. D. 222.

CHAPTER 11.

Of the Provisional Remedies in Civil Actions.

Sec. 155. The provisional remedies in civil actions are:

1. Arrest and bail.
2. Claim and delivery of personal property.
3. Injunction.
4. Attachment.
5. Receivers.
6. Deposit in court.

Article 1.—Arrest and Bail.

Sec. 156. No person shall be arrested in a civil action, except as prescribed by this code; but this provision shall not apply to proceedings for contempt.

Sec. 157. The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining, or converting property.

2. In an action for a fine or penalty, or on a promise to marry, or for money received, or for property embezzled or fraudulently misapplied, by a public officer, or by an attorney, solicitor, or counselor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3. In an action to recover the possession of personal property unjustly detained, where the property or any part thereof has been concealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff, and with the intent that it should not be found, or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit.

5. When the defendant has removed or disposed of his property, or is about to do so, with the intent to defraud his creditors. But no female shall be arrested in any action, except for willful injury to person, character or property.

Provisional remedies classified.

s. 147 Civ. Proc. C. L. § 4943.

Arrest in civil action limited.

s. 148 Civ. Proc. C. L. § 4944.
When defendant in civil case may be arrested.

s. 149 Civ. Proc. C. L. § 4945.

Sec. 158. An order for the arrest of the defendant must be obtained from a judge of the court in which the action is brought.

Where order for arrest is obtained.

s. 150 Civ. Proc. C. L. § 4946.

Sec. 159. The order may be made whenever it appears to the court, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 157. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed in the file of the clerk of the court.

Basis of the order.

s. 151 Civ. Proc. C. L. § 4947.

Part vs. Grant, 8 S. D. 248.

Sec. 160. Before making the order, the judge shall require a sufficient undertaking on the part of the plaintiff, with or without sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking be executed by the plaintiff, without sureties, he shall annex thereto an affidavit that he is a resident and freeholder or freeholder within the state, and worth double the sum specified in the undertaking, over all his debts and liabilities, and exclusive of all property exempt from execution by the laws of this state.

Plaintiff must give an undertaking.

s. 152 Civ. Proc. C. L. § 4948.

Sec. 161. The order may be made to accompany the summons at any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and return the order, at the place and time therein mentioned to the plaintiff or attorney, by whom it shall be subscribed or indorsed. But said order of arrest shall be of no avail, and shall be vacated or set aside on motion, unless the same is served upon the defendant, as provided by law, before the docketing of any judgment in the action; and the defendant shall have twenty days, after the service of the order of arrest, in which to answer the complaint in the action and to move to vacate the order of arrest, or to reduce the amount of bail.

Order of arrest served how and when.

s. 153 Civ. Proc. C. L. § 4949.

Sec. 162. The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy thereof.

Copy to be given to defendant.

s. 154 Civ. Proc. C. L. § 4950.

Sheriff to make arrest—bail.

s. 155 Civ. Proc. C. L. § 4951.

Sec. 163. The sheriff must execute the order by arresting the defendant, and keeping him in custody until discharged by law, and may call the power of the county to his aid in the execution of the order, as in case of process. The defendant may give bail whenever arrested, at any hour of the day or night, and must have reasonable opportunity to procure it, before being committed to prison.

Defendant discharged—when

s. 156 Civ. Proc.
C. L. § 4952.

Bail—how given.

s. 157 Civ. Proc.
C. L. § 4953.

Surrender of defendant by bail.

s. 158 Civ. Proc.
C. L. § 4954.

Bail may arrest defendant.

s. 159 Civ. Proc.
C. L. § 4955.

Action against bail.

s. 160 Civ. Proc.
C. L. § 4956.

Bail exonerated.

s. 161 Civ. Proc.
C. L. § 4957.

Sec. 164. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this article.

Sec. 165. The defendant may give bail by causing a written undertaking in the sum specified in the order of arrest, to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times consider himself answerable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment thereon; or if he be arrested for the cause mentioned in the third subdivision of section 157 an undertaking to the same effect as that provided in section 189.

Sec. 166. At any time before a failure to comply with the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and shall by a certificate in writing acknowledge the surrender.

2. Upon the production of a copy of the undertaking and the sheriff's certificate, a judge of the court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated; and on filing the order and the papers used on said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in subdivision three of section 157 of this code so as to discharge the bail from an undertaking given to the effect provided by section 189.

Sec. 167. For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Sec. 168. In case of failure to comply with the undertaking, the bail may be proceeded against by action only.

Sec. 169. The bail may be exonerated either by the death of the defendant, or his imprisonment in a state or territorial prison, or his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, within twenty days after commencement of the action against the bail, or within such further time as may be granted by the court.

Sec. 170. Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the plaintiff, or attorney by whom subscribed, with his return indorsed, and a certified copy of the undertaking of the bail. The plaintiff, within ten days thereafter, shall serve upon the sheriff a notice that he does not accept the bail, and he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability.

Plaintiff may
except to the
bail.

s. 162 Civ. Proc.
C. L. § 4958.

Sec. 171. On the receipt of such notice the sheriff or defendant may, within ten days thereafter, give to the plaintiff or attorney by whom the order of arrest is subscribed, notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before a judge of the court at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking in the form prescribed in section 165 of this code.

Justification of
the bail.

s. 163 Civ. Proc.
C. L. § 4959.

Sec. 172. The qualifications of bail must be as follows:

Qualifications
of bail.

1. Each of them must be a resident and householder or freeholder within the state.

s. 164 Civ. Proc.
C. L. § 4960.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, or a justice of the peace, on justification, may allow more than two to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Sec. 173. For the purpose of justification, each of the bail shall appear and stand before the judge, or a justice of the peace, at the time and place mentioned in the notice, and may be examined on oath on the merits of the plaintiff touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the plaintiff if required by the plaintiff.

Examination of
bail.

s. 165 Civ. Proc.
C. L. § 4961.

The costs of the justification shall be paid by the party offering the bail, if same is found not sufficient, but if sufficient, then the party excepting shall pay the costs of the justification. The costs of such justification shall be returned by such officer with his report of the same, and shall be taxed by the court in which the action is pending, as other costs are taxed.

Costs—by
whom paid.

c. 21, 1859.

Sec. 174. If the judge or justice of the peace find the bail sufficient, he shall annex the examination to the undertaking, indorse his decision thereon, and cause them to be filed with the clerk; and the sheriff shall thereupon be exonerated from liability.

Allowance of
bail.

s. 166 Civ. Proc.
C. L. § 4962.

Sec. 175. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged out of custody.

Deposit of
money—defendant
discharged.

s. 167 Civ. Proc.
C. L. § 4963.

Payment into court.

s. 168 Civ. Proc.
C. L. § 4964.

Money to be refunded on approved bail.

s. 169 Civ. Proc.
C. L. § 4965.

If money remains on deposit it shall be applied on judgment.

s. 170 Civ. Proc.
C. L. § 4966.

Sheriff liable in case of escape.

s. 171 Civ. Proc.
C. L. § 4967.

Judgment against sheriff.

s. 172 Civ. Proc.
C. L. § 4968.

Bail liable to sheriff.

s. 173 Civ. Proc.
C. L. § 4969.

Motion to vacate arrest.

s. 174 Civ. Proc.
C. L. § 4970.

Motion to be heard upon affidavits.

s. 175 Civ. Proc.
C. L. § 4971.

Sec. 176. The sheriff shall, within four days after the deposit is made, pay the same into court, and shall take from the officer receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff and the other to the defendant or his attorney. For any default in making such payment the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

Sec. 177. If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section 171 of this code any time before judgment; thereupon the judge before whom the justification is had, shall direct in the order of allowance, that the money deposited be refunded by the sheriff to the defendant, and it shall be refunded accordingly.

Sec. 178. Where money shall have been so deposited, if it remains on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court apply the same in satisfaction thereof, and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unpaid.

Sec. 179. If, after being arrested, when there is a jail to which the defendant may be committed, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail. But he may discharge himself from such liability, by the giving and justification of bail as provided in sections 171, 172, 173 and 174 of this code at any time before process issues against the person of the defendant, to enforce the order or judgment in the action.

Sec. 180. If a judgment be recovered against the sheriff, upon his liability as bail and an execution thereon be returned unsatisfied in whole or in part, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

Sec. 181. The bail taken upon the arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action for damages which he may sustain by reason of such omission.

Sec. 182. A defendant arrested may, at any time before judgment, apply, on motion, to vacate the order of arrest, or to reduce the amount of bail.

Sec. 183. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

Article 2.—Claim and Delivery of Personal Property.

Sec. 184. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property provided in this article.

Simpson Co. vs. Marshall, 5 S. D. 528; *Willis vs. DeWitt*, 3 S. D. 281.

Sec. 185. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, stating:

1. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof, according to his best knowledge, information and belief.

4. That the same has not been taken for a tax, assessment, or sale, pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute, exempt from such seizure; and,

5. The actual value of the property.

Bank vs. Magnusson, 9 N. D. 151.

Sec. 186. The plaintiff may, thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff.

Sec. 187. Upon the receipt of the affidavit and notice, with a written undertaking executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion.

Sec. 188. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either

Claim and delivery of personal property.

s. 176 Civ. Proc. C. L. § 4972.

Affidavit to be made by plaintiff

s. 177 Civ. Proc. C. L. § 4973.

Requisition upon the sheriff.

s. 178 Civ. Proc. C. L. § 4974.

Plaintiff shall give security to sheriff who shall take property.

s. 179 Civ. Proc. C. L. § 4975.

Defendant may except to sufficiency of sureties.

s. 180 Civ. Proc. C. L. § 4976.

Undertaking by
defendant for
return of
property.

§. 181 Civ. Proc.
C. L. § 4977.

Defendant's
Sureties shall
justify—how.

§. 182 Civ. Proc.
C. L. § 4978.

Qualifications
of sureties.

§. 183 Civ. Proc.
C. L. § 4979.
Concealed
property.

§. 184 Civ. Proc.
C. L. § 4980.

Sheriff shall
keep property.

§. 185 Civ. Proc.
C. L. § 4981.

Property
claimed by
third person.

§. 186 Civ. Proc.
C. L. § 4982.

waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot retain the property, as provided in the next section.

Sec. 189. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, stated in the affidavit of the plaintiff, for the delivery thereof, to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause, be recovered against the defendant. If a return of the property be not so required, within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 194 of this code.

Sec. 190. The defendant's sureties, upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a judge or justice of the peace, in the same manner as upon bail on arrest; upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties, until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Sec. 191. The qualifications of sureties, and their justification shall be as are prescribed by sections 172 and 173 in respect to bail upon an order of arrest.

Sec. 192. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

Sec. 193. When the sheriff shall have taken property, as in the article provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

Fox vs. Deering Co., 7 S. D. 443.

Sec. 194. If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, exclusive of property exempt from execution, and freeholders or householders of the county. And no claim

h property by any other person than the defendant or his agent ll be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a sonable time to demand such indemnity.

Welter vs. Jacobson, 7 N. D. 32.

Sec. 195. The sheriff shall file the notice and affidavit, with his ceedings thereon, with the clerk of the court in which the action is ding, within twenty days after taking the property mentioned rein.

Guernsey vs. Tuthill, 12 S. D. 584; Bank vs. Feeny, 9 S. D. 550.

Papers shall all be filed with the clerk.

s. 187 Civ. Proc. C. L. § 4983.

Article 3.—Injunction.

Sec. 196. The writ of injunction, as a provisional remedy, is dished, and an injunction by order is substituted therefor. The er may be made by the court in which the action is brought, or by dge thereof in the cases provided in the next section, and, when de by a judge may be enforced as the order of the court.

Sec. 197. An injunction may be granted in either of the follow-cases:

1. When it shall appear by the complaint that the plaintiff is tilled to the relief demanded, and such relief, or any part thereof, sists in restraining the commission or continuance of some act, the mmission or continuance of which, during the litigation, would pro-e injury to the plaintiff; or,

2. When, during the litigation, it shall appear that the defend-is doing, or threatens, or is about to do, or procuring or suffer-some act to be done in violation of the plaintiff's rights respecting subject of the action, and tending to render the judgment inef-tual, a temporary injunction may be granted to restrain such act.

3. And when, during the pendency of an action, it shall appear affidavit that the defendant threatens, or is about to remove or pose of his property, with intent to defraud his creditors, a tem-ary injunction may be granted to restrain such removal or dis-ition.

State vs. Markuson, 7 N. D. 155.

Sec. 198. The injunction may be granted at the time of com-encing the action, or at any time afterwards, before judgment, up-its appearing satisfactory to the court or judge, by the affidavit the plaintiff, or of any other person, that sufficient grounds exist refor. A copy of the affidavit must be served with the injunction. Catholicon Hot Springs Co. vs. Ferguson, 7 S. D. 503.

Sec. 199. An injunction shall not be allowed after the defendant ll have answered, unless upon notice or upon an order to show se; but in such case the defendant may be restrained until the de-ion of the court or judge granting or refusing the injunction.

Sec. 200. Where no provision is made by statute as to security on an injunction, the court or judge shall require a written under-king on the part of the plaintiff, with or without sureties, to the

Injunction by order.

s. 188 Civ. Proc. C. L. § 4984.

When injunc-tion will be granted.

s. 189 Civ. Proc. C. L. § 4985.

Time Injunction may be granted.

s. 190 Civ. Proc. C. L. § 4986.

Injunction after answer.

s. 191 Civ. Proc. C. L. § 4987.

plaintiff to give security.

s. 192 Civ. Proc. C. L. § 4988.

effect that the plaintiff will pay to the party enjoined, such damages, not exceeding an amount to be specified, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by reference, or otherwise, as the court shall direct.

Edmison vs. Water Co., 10 S. D. 440; *Idem*, 14 S. D. 486.

Order to show cause.

s. 193 Civ. Proc. C. L. § 4989.

Injunction against a corporation.

s. 194 Civ. Proc. C. L. § 4990.

Application to vacate injunction.

s. 195 Civ. Proc. C. L. § 4991.

Counter affidavits.

s. 196 Civ. Proc. C. L. § 4992.

Property may be attached.

c. 67, 1895. C. L. § 4993.

Sec. 201. If the court or judge deem it proper that the defendant, or any of the several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Sec. 202. An injunction to suspend the general and ordinary business of a corporation must not be granted without due notice of the application therefor, to the proper officer of the corporation, except when the state is a party to the proceeding.

Sec. 203. If the injunction be granted by a judge of the court without notice, the defendant at any time before the trial, may apply, upon notice, to a judge of the court in which the action is brought to vacate or modify the same. The application may be made upon the complaint and the affidavits on which the injunction was granted or upon affidavits on the part of the defendant, with or without answer.

Sec. 204. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other proofs, in addition to those on which the injunction was granted.

Article 4.—Attachment.

Sec. 205. In all cases against a corporation created by or under the laws of any other state, territory, government or country, which has not complied with the laws of this state relative to the appointment of agents upon whom service of process may be made, or against a defendant who is not a resident of this state, or against a defendant who has absconded or concealed himself, or whenever any person or corporation is about to remove any of his or its property from this state or has assigned, disposed of, secreted or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors, as hereinafter mentioned, the plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of such defendant or corporation attached, in the manner hereinafter prescribed, as security for the satisfaction of such judgment as the plaintiff may recover, and for the purposes of this section an action shall be deemed commenced when the summons is issued; Provided, however, That personal service of such summons shall be made, or publication thereof commenced within thirty days.

Bradley vs. Land Co., 12 S. D. 28; *Bank vs. Corkings*, 10 S. D. 98; *Reedy vs. Howard*, 11 S. D. 160; *Bank vs. McMillan*, 9 S. D. 227; *Bank vs. Van Voorst*, 5 S. D. 548; *McLaughlin vs. Wheeler*, 2 S. D. 379; *Trust Co. vs. Keeney*, 1 N. D. 411; *Sullivan vs. Nicholson*, 5 N. D. 426.

Sec. 3. The intent and object of this act is to cure a defect in the Code of Civil Procedure of the Revised Code of South Dakota, 1903, caused by the inadvertant omission of the several sections and parts of sections in this act hereinbefore mentioned from the original of said code adopted and passed by the legislature of the state of South Dakota at the eighth biennial session thereof and approved January 21, 1903.

Sec. 4. All process issued, pleadings or notices filed or served and all proceedings had, begun or taken in good faith by parties to civil actions or proceedings, or their attorneys in the belief and with the understanding that the sections and parts of sections in this act hereinbefore mentioned had been passed by the legislature, duly approved by the governor and were in force, are hereby legalized and declared to be valid to the same extent only as though said sections and parts of sections had been contained in said Code of Civil Procedure at the time of its passage and approval.

Sec. 5. Whereas an emergency exists and is hereby declared to exist, this act shall take effect and be in force from and after its passage and approval.

Approved February 26, 1907.

CHAPTER 117

(S. B. 65)

RELATING TO QUALIFICATIONS OF CLERKS OF COURTS

AN ACT Entitled an Act to Provide for the Filing of Certificates of Qualifications of Clerks of Courts in the Office of the Secretary of State and Making Such Certificate Evidence Thereof.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Each clerk of the circuit and county court in this state shall, within ten days after his qualification, cause the county auditor of his county to sign, under the seal of his office, a certificate to the effect that such clerk of the circuit and county courts has been duly elected to said office for the ensuing term, and as such has duly filed in the office of the auditor of such county his oath of office and his approved bond. Which certificate shall be filed with the secretary of state and shall be a record of his office and be evidence of the election and qualification of such clerks.

Approved February 20, 1907.

CHAPTER 118

(S. B. 204)

RELATING TO THE JUSTIFICATION OF SURETIES ON ARREST AND BAIL

AN ACT Entitled an Act to Amend Section 171 of the Code of Civil Procedure of the Revised Code of South Dakota, 1903, Relating to the Justification of Sureties on Arrest and Bail.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 171 of the Code of Civil Procedure of the Revised Code of South Dakota, 1903, be amended so as to read as follows:

Section 171. Amendment] On receipt of such notice the sheriff or defendant may, within ten days thereafter, give to the plaintiff or attorney by whom the order of arrest is subscribed notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before the clerk of the circuit court of the county where the action is pending, or the judge thereof, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case other bail is given there shall be a new undertaking in the form prescribed in section 165 of this code.

§ 2. Repeal] All acts or parts of acts in conflict herewith are hereby repealed.

§ 3. Emergency] Whereas, an emergency exists and is hereby declared to exist, this act shall take effect and be in force from and after its passage and approval.

Approved March 2, 1904.

CHAPTER 119

(H. B. 36)

RELATING TO BAILIFFS AND JURORS

AN ACT to Regulate the Fees of Bailiffs and Jurors in the Circuit Court.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Fer Diem of Jurors and Bailiffs] The bailiffs and jurors in the circuit courts of this state shall be paid two dollars per day for each day in actual attendance upon such court, provided that the court may, in his discretion, allow bailiffs and jurors three dollars per day.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 26, 1907.

CHAPTER 120

(H. B. 66)

PROVIDING FOR APPEAL IN CRIMINAL CASES

AN ACT to Provide for Appeal in Criminal Cases.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Terms Defined] No writ of error shall be necessary to present for review in the supreme court any judgment or order heretofore removable thereto by such writ, but any such judgment or order may be therein reviewed by appeal and the words "writ of error," where used in the laws of this state, shall be held to mean and include "appeal."

§ 2. Appeal, How Taken] Such appeal must be taken by serving a notice in writing to such effect, signed by the appellant, or his attorney, on the clerk of the court and states attorney of the county where the order of judgment appealed from is entered, and filing such notice with the clerk, which notice shall state whether the appeal is from the whole or a part thereof, and if from a part only, specifying what part.

§ 3. Execution Stayed] After judgment, and before execution, in any case reviewable in the supreme court, upon the defendant stating to the trial court that he desires such matter reviewed on appeal, and desires execution stayed to enable him to perfect such appeal, the court shall, by order, stay such execution thirty (30) days, or such further time as to the court may appear necessary.

§ 4. Parties, How Known] The party taking such appeal shall be known as the appellant, and the adverse party as the respondent, but the order of the title of the action shall not be changed in consequence of such appeal.

§ 5. No appeal taken from an order made before final judgment shall stay further proceedings in said action in the trial court unless by order of the judge thereof.

§ 6. Defendant May be Admitted to Bail] The judge of the trial court, or any justice of the supreme court, shall, on such appeal being perfected, admit the defendant to bail in such sum as he shall by order deem proper, in all bailable cases.

An emergency is hereby declared to exist, and this act shall be in force from and after its passage and approval.

Approved February 20, 1907.

CHAPTER 121

(H. B. 218)

RELATING TO CONVEYANCE OF REAL ESTATE BY GUARDIAN

AN ACT Entitled an Act Relating to the Conveyance of Real Property by Guardian.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Conveyance by Guardian] That when real property has been heretofore or may hereafter be allotted to any person under the provisions of the statutes of the United States, a guardian may sell and convey all the right, title and interest of his ward in and to any such real property upon order of the county court, as provided by section 402 of the Probate Code, and when the deed conveying the same shall have been approved by the department of the interior and delivered, such deed shall convey and vest in the grantee named therein all the right, title and interest of such ward in and to such real property and in the selling of said property in all cases where the officers of the department of interior shall receive the proceeds of such sale for the benefit of the ward and where none of the proceeds of such sale will come into the hands of such guardian, then the county court may dispense with the bonds required by section 403 of the Probate Code. Provided, that the guardian shall make his report as in other guardian estates of such sale to the county court, showing the steps taken by him or her under the order of sale, the total amount the land sold for, the amount of the ward's interest in the sale, the approval and delivery of the conveyance executed by the guardian by the department of the interior, and, immediately upon presentation of such report, in all cases where the officers of the interior department have approved such sale, delivered such deed and received the proceeds of such sale for the benefit of such wards, the county court shall, without giving notice as provided by section 404 of the Probate Code, hear evidence in support of such report, and if said deed has been so approved and delivered, confirm said sale and said instruments shall be made of record as in other guardianship estates.

§ 2. Emergency] An emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1907.

CHAPTER 122

(H. B. 154)

RELATING TO SERVICE OF SUMMONS

AN ACT to Amend Section 111 of Chapter 9 of the Code of Civil Procedure of the Revised Code of South Dakota, Relating to Service of Summons.

Be it Enacted by the Legislature of the State of South Dakota:

Summons—How Served] The summons may be served by the sheriff of the county, where the defendant may be found, or by any other person, not a party to the action, who is an elector of the county in which such service is to be made at the time of making such service. The service shall be made and the summons returned with proof of the service, to the person whose name is subscribed thereto, with all reasonable diligence. The person subscribing the summons may, at his option, by an endorsement on the summons, fix a time for the service thereof, and the service shall be made accordingly, provided, however, that whenever any summons or other process shall be served by any person other than the sheriff, or his duly appointed deputy, of the county in which the service was made, no fee shall be allowed therefor, either for mileage and traveling, or making such service, or for serving such service or process.

All acts and parts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 123

(S. B. 267)

RELATING TO VERDICTS AND JUDGMENTS

AN ACT to Amend Section 141 of the Justice Code of the State of South Dakota Revised Code of 1903, Relating to Verdicts and Judgments.

Be it Enacted by the Legislature of the State of South Dakota:

Section 141, article 1, chapter 2, of the Justice Code 1903 be amended to read as follows:

Section 141. At the close of the trial judgment must be immediately rendered by the justice and entered in his docket. When the verdict is returned by the jury on Sunday or a legal holiday, in that case if the verdict is "not guilty," it must be immediately entered by the justice in his docket, and the defendant discharged. If the ver-

dict is "guilty," the justice must enter the verdict in his docket and render and enter judgment the next business day.

Approved March 7, 1907.

CHAPTER 124

(S. B. 221)

PROVIDING APPEALS IN CERTAIN CASES

AN ACT Entitled an Act Providing for Appeals From Decisions of Boards of Equalization of Assessment of Property.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appeals May be Taken] That any person, firm or corporation feeling aggrieved may appeal from any decision or decisions of any board of equalization of any county, city, town or township in this state to the circuit court of the county wherein such decision or decisions were made within the same and in the same manner and upon the same conditions and terms as appeals may be taken from the decisions of the board of county commissioners of any county in the state, and when there are more than one decision made by any such board during any session thereof, then any such person, firm or corporation may appeal from any one or more of such decisions as aforesaid which decisions may be included in and be appealed from as one appeal. Such appeals shall be heard and determined in the same manner as appeals from the board of county commissioners are heard and determined.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 125

(H. B. 279)

RELATING TO THE PROBATE OF ESTATES OF NON-RESIDENTS

AN ACT Relating to the Probate of Estates of Non-residents.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Probate of Estates of Non-Residents] In case of non-resident estates having property in this state not exceeding in value

the sum of ten thousand dollars, which estate has been duly probated in another state, the probate of said estate in this state may be dispensed with, after one year from the death of said decedent, on filing with the county judge a petition under oath showing the facts in said case together with certified copies of the petition, order of appointment of executor or administrator, inventory and final decree of distribution of estate, therein, and the county judge giving notice by publication for the period of three weeks of the intention of said petitioner to have said probate proceedings admitted in this state as a probate of said estate. If on the day set for hearing said petition no objection be made, the county judge shall make an order admitting said certified copies of the proceedings in said estate to record in his court and they shall be considered and treated from that time as original proceedings in his court and shall be conclusive evidence of the facts therein shown. If at such hearing any creditor shall object to said proceedings and show that the said decedent is indebted to him, then in that case the said matter shall be postponed and such creditor or other person be allowed to apply for letters of administration as in other cases.

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 126

(S. B. 113)

RELATING TO THE DESCRIPTION OF MONEY IN THE INDICTMENT OR INFORMATION OF THE PROSECUTION OF ROBBERY AND LARCENY

AN ACT Relating to a Sufficient Description of Money in the Indictment or Information for the Prosecution of Robbery or Larceny.

Be it Enacted by the Legislature of the State of South Dakota:

That in any prosecution for robbery or larceny of the money of any person or corporation, it shall be sufficient to allege generally in the indictment or information a robbery or larceny of money, and it shall be sufficient to maintain the charge in the indictment or information that any money was obtained by robbery or stolen without regard to a particular description of the money stolen or obtained as aforesaid.

Approved March 9, 1907.

CHAPTER 127

(H. B. 123)

RELATING TO SERVICE OF SUMMONS

AN ACT to Amend Section 112 of the Revised Code of Civil Procedure of 1903 of the State of South Dakota, Relating to the Service of Summons.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 112 of the Code of Civil Procedure of the state of South Dakota, be, and the same is, hereby amended by adding thereto the following:

Provided, that in any case where service may be made on a defendant, by publication, as provided in this section, the summons and complaint may, at the option of the plaintiff, be in the first instance, served upon the defendant personally without the state, in which event it shall not be necessary to present any affidavits to the court or procure any order for service by publication.

Approved March 4, 1907.

CHAPTER 128

(S. B. 25)

RELATING TO JURISDICTION OF JUSTICES COURTS

AN ACT to Amend Section 3, Article One of Chapter One of Justice Code, Relating to the Jurisdiction of Justices Courts.

Be it Enacted by the Legislature of the State of South Dakota:

That section 3 of article one of chapter one of Justices Code be amended as follows: Section 3. These courts shall have criminal jurisdiction to try and determine all cases of misdemeanor committed within their respective counties, where the punishment is a fine not exceeding one hundred dollars, or imprisonment in the county jail for a period not exceeding thirty days, or both such fine and imprisonment. And as to all public offenses which are indictable, they have the power of committing magistrate.

Approved February 27, 1907.

CHAPTER 129

(H. B. 23)

RELATING TO CODE OF CRIMINAL PROCEDURE

AN ACT Entitled an Act to Amend Section 86 of the Revised Code of Criminal Procedure.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section eighty-six (86) of the Revised Code of Criminal Procedure of this state be amended to read as follows:

Section 86. In all other cases an indictment or information for a public offense and all proceedings of a quasi criminal or penal nature including the forfeiture of existing rights shall be filed within three years after the commission of the offense or crime made the basis of the prosecution or proceeding; and be it further enacted, that this act shall apply to all such offenses and crimes as have heretofore taken place and to all pending proceedings in any of the courts of this state.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] Whereas, an emergency exists, this act shall take effect from and after its passage and approval.

Approved March 4, 1907.

CHAPTER 130

(H. B. 230)

REGULATING PRACTICE IN COUNTY COURTS

AN ACT Entitled an Act Prohibiting the Law Partners of County Judges from Practicing in the Courts Over which Their Partners Preside.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Law—Partners] Every county judge in this state who permits any person with whom he is directly or indirectly connected as a partner in the practice of law to practice as an attorney at law before him is guilty of a misdemeanor, and in addition to the punishment provided therefore he forfeits his office.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] Whereas, there is no provision of law to pre-

vent attorneys from practicing law before their partners when acting as county judges, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 26, 1907.

DISCRIMINATION

CHAPTER 131

(H. B. 2)

RELATING TO UNFAIR COMPETITION AND DISCRIMINATION

AN ACT to Define and Prohibit Unfair Competition and Discrimination, and to Define the Powers and Duties of the Attorney General in Regard Thereto.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Unlawful Discrimination] Any person, firm, or corporation foreign or domestic, doing business in the state of South Dakota, and engaged in the production, manufacture or distribution of any commodity in general use, that intentionally, for the purpose of destroying the competition, of any regular, established dealer in such commodity, or to prevent the competition of any person who, in good faith intends and attempts to become such dealer, shall discriminate between different sections, communities, or cities of this state, by selling such commodity at a lower rate in one section, community or city, or any portion thereof than such person, firm or corporation, foreign or domestic charges for such commodity in another section, community, or city, after equalizing the distance from the point of production, manufacture, or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination.

§ 2. Duty of Attorney General] If complaint shall be made to the attorney general that any corporation is guilty of unfair discrimination as defined by this act, he shall investigate such complaint and for that purpose he may subpoena witnesses, administer oaths, take testimony and require the production of books or other documents, and, if in his opinion sufficient grounds exist therefor, he may prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case

may be, and to permanently enjoin such corporation from doing business in this state, and if in such action the court shall find that such corporation is guilty of unfair discrimination as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

§ 3. Violation—Penalty] Any person, firm, or corporation violating the provisions of section one (1) of this act, shall, upon conviction thereof be fined not less than two hundred dollars nor more than ten thousand dollars for each offense.

§ 4. Remedies Commulative] Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

Approved March 5, 1907.

DIVORCE

CHAPTER 132

(S. B. 95)

RELATING TO ACTIONS FOR DIVORCE AND THE PROCEEDINGS THEREIN

AN ACT Relating to Action for Divorce and the Proceedings Therein.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Time of Residence] The plaintiff in an action for divorce must have been an actual resident, in good faith, of this state for one year, and of the county wherein such action is commenced for three months next preceding the commencement of said action, except as herein otherwise provided.

§ 2. Action May be Commenced at Once in Certain Cases] If the parties were married in this state and the plaintiff shall have resided therein from the time of marriage until the commencement of the action, said action may be commenced at any time after the cause of action has arisen.

§ 3. Hearings—Where Had] All hearings and trials upon the merits in actions for divorce, except default cases and except such

hearings as relate to alimony during the pendency of the action, or the granting of an interlocutory order or decree, shall be had at a regular term of court.

§ 4. When Cause Arises in This State] If the cause of action arose in this state then said action may be commenced at any time after the plaintiff shall have resided in the state for a period of six months.

§ 5. Repeal] All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 8, 1907.

DEPARTMENT OF HISTORY

CHAPTER 133

(H. B. 297)

RELATING TO THE DEPARTMENT OF HISTORY

AN ACT Entitled an Act Providing that Certified Copies of Papers or Parts Thereof in the Custody of the Department of History, May be Accepted in Evidence as Proof of Service in Actions and Proceedings in This State.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Certain Instruments Accepted as Evidence of Contents Thereof] That a duly certified copy of any paper or document, article or advertisement in the custody of the department of history, made by any executive officer thereof under the seal of such department, may be accepted as prima facie evidence of the contents thereof in any court or proceeding in this state.

§ 2. Certified Copy of Legal Notice] A copy of any legal notice published in any newspaper printed in the territory of Dakota, or the state of South Dakota, now or hereafter in the custody of the department of history, duly certified by any executive officer thereof, under the seal of the department of history, which certificate shall recite that the original files of said newspaper for all of the period for which such legal notice appeared therein are in the possession of the department of history, and shall state the number of publications which such legal notice received, and the dates upon which each appeared in such newspaper, shall be accepted in any action or proceeding in this state as proof of service of such legal notice with the

same force and effect as the original printers affidavit of the printing of said notice. Such copy of such legal notice so certified shall be entitled to record in the office of register of deeds.

§ 3. Fees] For making copies of any such paper, advertisement, legal notice or document, the department of history shall charge one cent for every ten words, and for every certificate thereto the sum of fifty cents, and all fees for copies and certificates so made shall be paid into the state treasury, and credited to the state historical fund.

§ 4. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 7, 1907.

DRAINAGE

CHAPTER 134

(S. B. 135)

RELATING TO DRAINAGE AND LEVEES

AN ACT Providing for the Establishment, Construction and Maintenance of Drainage and Levees in Counties, Whenever Such Drainage Shall be Conducive to the Public Health, Convenience or Welfare, or Whenever it Shall be Necessary or Practicable for Drainage of Agricultural Lands.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Power of County Commissioners] The board of county commissioners of any county, at any regular or special session may establish and cause to be constructed any ditch or drain; may provide for the straightening or enlargement of any watercourse or drain previously constructed, and may provide for the maintenance of such ditch, drain or watercourse, whenever such ditch, drain or watercourse shall be conducive to the public health, convenience or welfare, or whenever the same shall be for the purpose of draining agricultural lands.

§ 2. Petition] The board of county commissioners shall act only upon a written petition signed by one or more owners of lands likely to be affected by the proposed drainage. Such petition shall set forth the necessity for the drainage, a description of the proposed route by its initial and terminal points and its general course, or by

its exact course in whole or part and a general statement of the territory likely to be affected thereby. The petition shall be accompanied by a bond with sufficient sureties to be approved by the county auditor, conditioned to pay all expenses incurred in case the board of county commissioners do not grant said petition or the same is denied on appeal. Said petition may be presented at any regular or special meeting of the board of county commissioners, and if sufficient in form shall be ordered filed with the county auditor.

§ 3. Board Must Inspect Proposed Route] Upon filing such petition the board of county commissioners shall as soon as practicable inspect the proposed route, and, if, in their opinion it is necessary, shall cause a survey of the proposed drainage to be made by a competent surveyor.

Such survey shall primarily be for the purpose of aiding the board of county commissioners in determining the necessity of the proposed drainage, but may be a complete survey such as will be required for the construction of the proposed drainage and assessment of its cost, or as much less as the board may require. Said survey may extend to other lands than those affected by the proposed drainage for the purpose of determining the best practical method of draining the entire section of country of which the lands proposed to be drained or a portion of them are a part, and thereby in part the practicability of the proposed drainage. For the purpose of inspection or surveys the county commissioners, surveyors or their employes may enter upon any lands traversed by the proposed drainage or in their judgment likely to be affected thereby.

§ 4. Duty of Surveyor] The surveyor shall report in writing to the board of county commissioners and his report shall be filed with the petition. After personal inspection or after receipt of the surveyor's report the board shall determine the exact line and width of the ditch, if the same shall not be fixed in the petition and shall file their determination with the petition. The board shall then fix a time and place for the hearing of said petition and shall give notice thereof by publication for two consecutive weekly issues in a newspaper of the county to be designated by the board and by posting copies of said notice in at least three public places near the route of the proposed drainage. Such notice shall describe the route of the proposed drainage and the tract of country likely to be affected thereby in general terms, the separate tracts of land through which the drainage proposed will pass and give the names of the owners thereof as appears from the records of the office of the register of deeds on the date of the filing of the petition, and shall refer to the files in the proceeding for further particulars. Said notice shall summon all persons affected by the proposed drainage to appear at said hearing and show cause why the said drainage should not be established and constructed and shall summon all persons deeming themselves damaged by the pro-

posed drainage or claiming compensation for the lands proposed to be taken for the drainage to present their claims therefor at said hearing.

§ 5. Hearing May be Had on Petition] At such hearing any person interested may appear and contest the statements of the petition and matters set forth in the surveyor's report and finding of the board as to width and route. The petitioners in like manner may be heard in support of the petition. After full hearing the drainage may be established along the line set forth in the petition or in the finding of the board prior to the hearing, or the board may vary the route thereof or its width as deemed practicable or necessary. If the board deem it best to vary said route to that it will pass through the other lands than those described in the notice of hearing, or to increase the width of lands to be taken for the proposed drainage the board shall adjourn the hearing and give the owners of such lands notice as in case of the original hearing. When the line proposed is along highways already established the drain shall be located at a sufficient distance from the center of such highways to permit a good road along the central lines thereof. If the proposed drainage does not give sufficient fall to drain the lands sought to be drained or will not properly take care of the waters collected by such drainage the same shall be extended so as to secure the drainage or properly dispose of the water. The hearing in such cases shall be adjourned and notice given to all parties newly affected as in case of the original hearing. When the board of county commissioners shall have fully heard and considered said petition and all matters in opposition to or in support of the same they shall if they find the proposed drainage not conducive to the public health, convenience or welfare or not needed or practicable for the purpose of draining agricultural lands, deny said petition, the petitioners to be jointly and severally liable for the costs of the proceedings, the same to be recovered in a civil action. If they find the drainage proposed or any variation thereof conducive to the public health, convenience or welfare or necessary or practicable for draining agricultural lands they shall establish the drainage and shall assess the damages sustained by each tract of land or other property through which the same shall pass and the damages as compensation for the land taken for the route of such drainage. Any person interested may be heard in the matter of damages or compensation for land and the determination of the board of county commissioners shall be final unless appeal therefrom as provided in this act shall be taken, failure to prosecute such appeal or to appear and contest an award of damages by the board, to be conclusively deemed a waiver of any such damages or compensation for land taken or of any claimant's rights to have the same assessed by a jury. Such drain shall be given a name and shall be recorded and indexed in a book kept for that purpose in the auditor's office.

§ 6. Equalization of Benefits] After the establishment of the drainage and the fixing of the damages, if any, the board of county commissioners shall fix the proportion of benefits of the proposed drainage among the lands affected and shall appoint a time and place for equalizing the same. Notice of such equalization of benefits shall be given for two weeks by publication for two consecutive weekly issues in a newspaper of the county to be designated by the board and by posting copies of said notice in at least three public places near the route of said drainage. Said notice shall state the route and width of the drainage established, a description of each tract of land affected by the proposed drainage and the names of the owners of the several tracts of land as appear from the records of the office of the register of deeds of the county at the date of the petition and the proportion of benefits fixed for each tract or property, taking any particular tract as a unit, and shall notify all such owners to show cause why the proportion of benefits shall not be fixed as stated. The proportion of benefits which any city, town or township may obtain by the construction of such drainage to highways or otherwise and the benefits which any railroad company may obtain for its property by such construction shall be fixed and equalized together with the benefits to tracts of land. Benefits to be considered in any case shall be such as accrue directly by the construction of such drainage or indirectly by virtue of such drainage being an outlet for connecting drains that may hereafter be constructed.

§ 7. Assessments] After the establishment of the drainage and the determination of the damages and the fixing of the proportions of benefits by the board and before the equalization of the latter the board may make an assessment against each tract and property affected in proportion to the benefits fixed for the purpose of paying such damages and the cost of establishment thus far incurred or to be incurred. The costs of establishment shall include the cost of services of the board of county commissioners, surveyors and assistants, plans and profiles, publication and filing and other fees, interest on bonds issued or to be issued and all other expenses incurred or to be incurred that in any way contributed or will contribute to the establishment or construction of the drainage. A hearing may be had at the same time and place fixed for the equalization of the benefits and upon like notice the notice containing the additional statement of the amount proposed to be assessed to each tract or property and a summons to show cause why the assessment should not be equalized and made as stated. If an assessment is not made until after the equalization of proportion of benefits it may be made afterward at any time upon like notice as above provided. At any such hearing the said assessment shall be equalized and finally fixed and laid by order of said board. A certified copy of such assessment order shall be filed by the county auditor with the county treasurer, and from its filing

said assessments shall be due and payable and shall be valid and perpetual liens upon the respective tracts so assessed against all persons or governments except the state and United States, and if not paid within ten days shall bear interest from the date of the order of the assessment at six per cent. per annum, payable annually. Such assessment shall be paid to and received by the county treasurer and paid over to the holders of assessment certificates or upon the order of the county commissioners, and the expenses of the records thereof in the treasurer's office and of collection shall be not to exceed one-half per cent. of the total amount collected, and the same shall be a part of the expense of drainage. Such assessments may be enforced against the lands assessed in all respects as a mortgage lien. The board of county commissioners may issue separate assessment certificates against each tract assessed for the amount of the assessment thereon, and may sell the same at not less than par value, with all accrued interest, or may contract to pay for the construction of such drainage with such assessment certificates. Such assessment certificates shall refer to the record in the office of the county auditor of the final order of assessment and of the filing of a copy thereof in the county treasurer's office, shall transfer to the holder all interest, claim or right in or to such assessments, bear the same rate of interest, carry the lien of such assessments and be enforceable as a mortgage lien or by any other method provided by law.

Instead of making an assessment for the purpose of paying the damages allowed in any drainage proceeding and the costs of establishment the board of county commissioners may issue warrants payable only out of the assessment to be thereafter made, the same to bear interest at six per cent. per annum and may sell said warrants at not less than the face value thereof and shall with said moneys so raised pay any damages allowed and costs of establishment. In making assessment for such drainage the said warrants and costs of issue shall be counted as part of the costs of the drainage.

§ 8. Bids—Specifications—Contracts] Whenever sufficient moneys shall have been collected any damages occasioned by the construction of such drainage and fixed as herein provided shall be paid, and thereupon the board of county commissioners shall proceed to construct said drainage and shall let contracts for the construction of the same. Said contracts may require the contractors to take their pay in assessment certificates to be thereafter issued. The contracts may be for the construction of the entire drainage or for any portion thereof, and shall be let upon competitive bids, the boards reserving the right to reject any and all bids. The lowest responsible and capable bidders shall be accepted, but if any land owner affected be an equally low, capable and responsible bidder with a non-owner of lands affected the former shall be preferred. When any contract shall be let the contractor shall give a bond in such

sum as shall be approved by the board of county commissioners, conditioned for the faithful performance of his work and the full completion of his contract to the satisfaction of the county commissioners. For the information of contractors in bidding upon the proposed drainage full plans and specifications shall be filed in the office of the county auditor. Contracts for building bridges or culverts rendered necessary by the construction of such drainage may be let separately and after the drain is completed. The cost of constructing such bridges or culverts shall be charged in the first instance as part of the cost of drainage and thereafter such bridges and culverts shall be maintained as part of the highways.

§ 9. Board May Extend Time for Completion of Contract] The board of county commissioners shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the county commissioners may, in their discretion at any time thereafter, relet such unfinished portion or any part thereof after not less than five days' notice thereof to the lowest responsible bidder, and shall take security as for the original contract. The cost of completing such parts over and above the contract prices and the expense of notices and reletting shall be collected by the county commissioners of the first contractors. Provided, that in no case shall the county commissioners forfeit and annul a contract without five days' notice to the contractor, if found, and if not found then by written notice left at his last known place of residence in the county.

§ 10. Assessments for Further Costs] At any time after the damages arising from the establishment and construction of such drainage are paid as aforesaid and the lands for such drainage are taken assessments may be made for further costs and expenses for construction. If the contractors are required and agree to take assessment certificates for their services assessments need not be made until the completion of the work when an assessment shall be made for the entire balance of costs of construction, including the services of the board of county commissioners, surveyors and assistants, plans and profiles, publication and filing and other fees, interest on bonds issued or to be issued and all expenses of every kind and nature that contribute to the establishment and construction of the drain, and such assessment shall be made by the board of county commissioners and equalized upon notice and filed in all respects as before provided for the first assessment. And the said assessment and the certificates issued thereon shall be in like manner perpetual liens upon the tracts assessed, interest bearing and enforceable as such first assessment and certificates. The board of county commissioners may sell such assessment certificates at not less than par and thereby raise funds to defray the cost of establishment and construc-

tion. If there be no damages to be paid before taking the lands for such drainage only one assessment need be made. In any case in the discretion of the board, several assessments may be made as the work progresses. Assessments shall be paid to the county treasurer and the moneys therefrom shall be paid by him to the holders of assessment certificates upon the order of the county commissioners for the purpose of the particular drainage.

§ 11. Acceptance of Drainage by Board] After the work of construction shall have been fully completed the drainage shall be accepted by the board of county commissioners after careful inspection by orders duly made, and payment shall in any case be made only upon the completion of the contract unless in the discretion of the board of county commissioners agreement be made for partial payments.

§ 12. Appeals] An appeal will lie upon any final order or determination of a board of county commissioners or denying the proposed drainage, fixing damages occasioned by the taking of lands for said drainage, or by said drainage, or fixing the proportion of assessments of benefits, to the circuit court of the county in which said drainage is located, by any one deeming himself aggrieved by any such order or determination. Written notice of such appeal shall be served upon the board of county commissioners and a bond conditioned to pay all the costs of such appeal, in case the contention of appellants be not sustained in some respect, shall be filed in the office of the clerk of the circuit court, to be approved by him in such amount and with such sureties as he deems necessary. Upon the service of such notice and the filing of such bond as aforesaid the county auditor shall transmit to the clerk of said court the petition and all other papers and all other records in said matter or certified copies thereof, when the convenience of the auditor's office would be seriously impaired by the transmission of said original records, and such matter shall be heard as an original action in said circuit court. Appeals shall in all cases be taken within thirty days from the making of such final order or determination. If, on the trial of such action, it be determined that said drainage as petitioned for and established by order of the board is not conducive to the public health, convenience or welfare, or is not necessary or practical for the purpose of draining agricultural lands, the petitioners shall be jointly and severally liable for all the costs thus far incurred. If the contention of the appellants as to the amount of damages or proportion of benefits or the practicability of the drainage when the route thereof is varied by the county commissioners over the protest and objection of the petitioners, be sustained in whole or in part, the costs of such trial shall be part of the cost of drainage.

§ 13. Assessment for Maintenance] For the cleaning and maintenance of any drainage provided herein, assessments may be made

upon the land owners affected in the proportions determined for such drainage at any time upon the petition of any person setting forth the necessity thereof, and after due inspection by the board of county commissioners. Such assessments shall be made as other assessments for the construction of said drainage, certificates may be issued thereon and such assessments and certificates shall be liens, interest bearing, perpetual and enforceable, in all respects as original assessments and may be sold at not less than par by the county commissioners, turned over to persons contracting for such cleaning and maintenance, or may be collected directly by the board of county commissioners.

§ 14. Assessments May be Paid in Installments] The owner of any tract of land against whom an assessment for drainage is made, may, if he within thirty days after the making of such assessment shall promise and agree in writing filed with the county auditor, in consideration of the right to pay his assessment in installments, that he will not make any objections to the illegality or irregularity of his assessments, if any there be, and will pay the same with interest as fixed by the board of county commissioners, he shall have the privilege of paying said assessment in ten annual installments, interest payable annually. Assessment certificates shall not issue until after the expiration of the period for filing such agreements with the county auditor, and when issued for assessments to be payable in installments may be issued in coupon form. The first installments shall be payable within ten days after a certified copy of the assessment has been filed in the office of the county treasurer, and subsequent installments shall be payable one, two, three, four, five, six, seven, eight and nine years from the date of such assessments, respectively, with interest on the whole sum unpaid, payable annually at maturity of the several installments.

§ 15. Board May Issue Bonds] The board of county commissioners of any county, whenever they have ordered the establishment of any drainage, are hereby authorized to issue bonds in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right of way or in locating or constructing any such drain. Said word "expenses" shall be construed to mean and cover every item of cost of such drain from its inception to its completion, said bonds to be payable only out of the funds to be derived from special assessments upon the lands benefited as herein provided. Such bonds shall bear interest at a rate not exceeding six per cent per annum, annual interest, payable not exceeding twenty years from issue. Such bonds shall be signed by the chairman of the board of county commissioners and countersigned by the auditor, who shall keep a record of all such bonds. Said bonds shall be issued for the benefit of the particular drainage, numbered, recorded and indexed in the office of the county

auditor, and shall in no case be issued for a sum exceeding the benefits to the lands affected by such drainage. The board of county commissioners shall have the power to negotiate such bonds at not less than par value thereof, as they may deem best for the interest of all persons affected by such drainage, any premium received on said bonds to be credited to the fund of the particular drainage. Such bond shall contain a recital that the same are issued pursuant to the authority of this act and that they are to be paid out of the funds to be herein obtained as herein provided. Assessments shall be made upon all of the lands benefited by such drainage as herein provided for the payment of principal and interest of such bonds when the same shall become due. Such assessments may be made by separate assessments for installments of interest and principal of said bonds or in one proceeding with but one set of notices. When the assessments are finally fixed the same shall be certified to the county treasurer by the county auditor, and the moneys paid in thereon shall be received by the county treasurer and paid over to the holders of such bonds; the expenses of records thereof in the treasurer's office and of collection to be a part of the expense of such drainage, the total thereof not to exceed one-half per cent upon the total amount collected. Separate funds shall be kept by the treasurer for each drain or drainage, and no funds for one drainage system shall be applied to any other drainage. No county shall be liable for the payment of any bonds issued under this act, but such bonds shall be paid only out of the funds derived by the special assessments herein provided for. Such bonds may be made payable at one time or spread over a period of years, as the county commissioners shall find for the best interest of the parties benefited by the drainage, and may be issued for all or any portion of the expenses of such drainage. Assessments may at any time be received and full discharge thereof given by the county treasurer to any property holder, but after the issue of any bonds such payment of assessments can be applied to the payment thereof only according to the terms of such bonds.

§ 16. Agreement for Combined Drainage] Owners of lands that require combined drainage may provide for drainage of their own lands by mutual agreement, in writing duly signed, acknowledged and filed with the county auditor. Such agreement may include the location, the character of the work to be done, the adjustment of the damages, the classification of the lands to be benefited thereby, the amount of special assessments to be laid, when the same shall be laid or so many of these or any other provisions as shall be agreed upon, and all provisions so agreed shall be as valid and binding as though the same objects were sought and obtained under the provisions hereof.

Upon the filing of such agreement the board of county commis-

sioners shall at their next meeting establish and locate the drainage agreed upon and the same shall be named, recorded and indexed, and the board of county commissioners shall thereafter have complete and full jurisdiction of the parties and the subject matter involved in said drainage and may order such further procedure under the provisions of this act as may be required to carry out the object or purpose of such agreement and to complete and construct the desired improvement, and shall thereafter retain jurisdiction of said drainage as in this act provided. It shall not be obligatory upon the board of county commissioners upon the filing of any such agreement for drainage to establish said drainage, but the board of county commissioners are hereby required to consider whether such drainage is practicable and will best serve the interest of the owners of lands in the immediate section of such agreed drainage, and if they find that the same will interfere with the practical drainage of such section and is not for the best interests of all land owners in such section the board of county commissioners shall not establish the agreed drainage.

§ 17. Further Powers of Board] Where proceedings have been had for the establishment of a ditch, drain, levee or straightening or enlarging of a natural water course under the law as heretofore existing, and the improvement has been established and constructed and assessments made upon the land benefited thereby, or upon any portion thereof, for the cost of such improvement, and where the assessment so made cannot for any reason be enforced, the board shall proceed as to all lands benefited by said improvement in the same manner as if the appraisement and apportionment of benefits had never been made, and they shall proceed in the manner hereinbefore provided, using as a basis the entire cost of such improvement, and in assessment of said benefits account shall be taken of the amount of assessments, if any, that have been paid by those benefited and credit therefor shall be given accordingly.

§ 18. Ditch or Drain May be Declared Nuisance] Any ditch, drain or water course which is now or may hereafter be constructed so as to prevent the surface and overflow water from the adjacent lands from entering the same is hereby declared a nuisance and may be abated as such, and any person or corporation diverting, obstructing, impeding or filling up any such ditch, drain or water course, or breaking down any levee established under the provisions of this act without legal authority shall be deemed guilty of maintaining or committing a public nuisance and be criminally punished as such.

§ 19. Powers Defined] The powers conferred by this act for establishing and constructing drains shall also extend to and include the deepening and widening of any drains which have heretofore been or may hereafter be constructed, also to straightening, cleaning out

and deepening the channels of creeks and streams and constructing, maintaining, remodeling and repairing of levees, dikes and barriers for the purpose of drainage, and the board of county commissioners may relocate or extend the line of any drain if the same is necessary to provide a suitable outlet, and shall cause a survey thereof to be made, but no proceedings affecting the rights of persons or property shall be had under this section except upon notice and the other procedure prescribed herein for the construction of drains.

§ 20. Drains Under Charge of County Commissioners] All drains that have been constructed under any law of this state, or that may be constructed under the provisions of this act, shall, except as otherwise provided, be under the charge of the board of county commissioners and their successors in office and be by them kept open and in repair. In all cases when any completed drain is or may be situated in more than one county the care of the portion thereof lying within any county is hereby assigned to the board of county commissioners of such county to be kept open and in repair. The cost of such repairs shall in all cases be assessed, levied and collected in the same manner as is provided herein for the construction of drains originally and in all cases when no assessments of benefits shall have been made, the board of county commissioners having charge of such drain shall make such assessment.

§ 21. Board May Make Rules and Regulations] The board of county commissioners of any county may make rules and regulations on the subject of drainage within such county as it may deem proper, not inconsistent with the provisions of this act and especially with regard to clearing out and keeping clear the channels of streams and the construction and maintenance of dams thereupon, with reference to their capacity for drainage, and may require of the owners of such dams reasonable service in cleaning and keeping such streams clear, as a consideration for the right to erect dams thereupon.

§ 22. Closed or Blind Drains May be Used] Closed or blind drains may be used whenever the same may be found practicable.

§ 23. Drains may be laid along within the limits of or across any public highway, and when so laid out constructed or when any road shall hereafter be constructed along or across any drain it shall be the duty of the county or township to keep the same free and open from all obstructions. A drain may be laid out along any railroad when necessary but not to the injury of such road. When it shall be necessary to cross a railroad right of way it shall be the duty of such railroad company when notified by the county commissioners to make the necessary openings through said right of way and to build and keep in repair suitable culverts or bridges so as to permit the free and unobstructed flow of water in the drainage ditch across said right of way at the company's own expense. If said company shall refuse or neglect to construct such drainage and bridges or culverts

for a period of 60 days after the service of said order or request then the county commissioners may appeal to the board of railroad commissioners of this state by petition for an order requiring the railroad company to construct such drain, bridge and culverts, and it shall be the duty of the railroad commissioners thereupon forthwith to examine the proposed crossing and make its order to the railroad company for the purpose of carrying into effect the provisions of this act, which order shall be enforced as other orders of the board.

§ 24. May Establish Drains for Towns and Cities] The board of county commissioners shall have the power, right and authority to establish drainage for or including the whole or any part of any incorporated town or city, including cities acting under special charter, as in this act provided, and they shall have the same power, right and authority with respect to the assessment of damages and benefits within such towns or cities as they have in other cases provided for in this act, and like notices to such city or town with respect to the establishment of such drainage and the apportionment of such drainage and the apportionment and assessment of damages and benefits shall be given as is required by this act to be given to owner of property damaged or benefited by the establishment or construction of such improvement.

§ 25. Title to Right of Way] The title to the right of way of drainage may be derived by consent or purchase from the owner of the lands through which the same may pass, as well as by the method of condemnation herein provided.

§ 26. When Drainage Runs Into Two or More Counties] When drainage shall be desired running into two or more counties the board of county commissioners of the several counties shall require in each county a petition setting forth the entire drainage and signature of owners of lands in each of the several counties, and the petition shall be accompanied by a bond to be filed with each county auditor. The boards of the respective counties shall act conjointly in the consideration of the said petition, a majority of each board being required for any determination. In all other respects the procedure shall be the same as in the case of drainage wholly within one county, and the surveyor's report and the record of such proceedings shall be made in each county. And all publications shall be made separately in each county. Assessments made shall be payable to the treasurer of the county in which the lands assessed lies. Bonds may be issued by the jointly acting boards payable out of the assessments for the drainage and shall be signed by the chairman of each board and countersigned by the auditor of each county and may be issued for any portion of the expenses of the drainage. The terms issue and collection of assessments to pay said bonds and all other procedure shall be the same as in the case of drainage within one county and all assessments and certificates shall be in like manner a lien and enforcea-

ble as in case of drainage in one county. If the several boards are unable to agree upon the establishment of the drainage, the matter of damages, the proportionment of assessment of benefits, or upon any other matter, any person interested may deem the petition denied and may bring the determination thereof into the circuit court of the county in which his own land lies by giving notice to the boards of county commissioners of his intention and requesting said boards or one of them to transmit its records to the clerk of the circuit court of said county. And it shall be the duty of the county auditor upon such notice and request to the county commissioners to transmit the petition and all other records in said proceedings, or certified copies of such records where the auditor's office would be inconvenienced, to the clerk of said circuit court. Said matter shall be tried therein and determined as an original action, and upon such determination the county commissioners of the several counties shall proceed in the matter of such drainage in accordance therewith.

§ 27. Compensation of County Commissioners] The county commissioners shall receive for their services three dollars per day for the time actually spent by them in the performance of the duties of their offices under this chapter. Publishers of newspapers shall receive for publishing legal notices the same fees as are allowed by law for publishing proceedings of the county commissioners. But the proceedings of the board of county commissioners when acting in a drainage matter under this act, are not to be published as a part of the proceedings of the county commissioners or at all. The county auditor shall charge a reasonable amount, to be fixed by the board, for services, to be paid into the general fund of the county.

The county commissioners shall have power to administer any oath required in any proceedings had before them or in which they may be called to act officially.

§ 28. Notice—How Served] Notice by personal service as of a summons in a civil action may be given, instead of by publication and posting in all cases where notice is provided for herein. In any case where notice is required under the provisions of this act and persons are affected by the drainage and are not notified either by publication or personally, and a hearing has been had or determination made, such persons may be notified personally or by publication and posting, to come in and show cause at a time and place to be fixed by the board of county commissioners, and make return or claim damages as in case of the original hearing. Any such omitted person may be brought in on such due notice at any stage of the proceedings, or after they have been otherwise concluded. The enforcement of any assessment shall not be enjoined for want of notice herein provided for except pending an application to the board of county commissioners for the determination of such matters as to which he deems himself not bound because of want of notice.

§ 29. Unlawful to Destroy Drain—Penalty] If any person shall willfully and maliciously remove any surveyor's stake set along the line of any drain laid out under the provisions of this act, or obstruct or injure any such drain or water course used for the purpose of drainage, or break down or injure any such levee, he shall for each and every offense be subject to a penalty of one hundred dollars, together with such sum as will be required to repair such damages, to be recovered in an action by the board of county commissioners. The amount of such recovery shall be deposited with the county treasurer to the credit of the construction and maintenance of such drain.

§ 30. Defects in Proceedings Disregarded] Any defects or irregularities not affecting the substantial rights of parties interested occurring in any drainage proceeding heretofore provided for shall be disregarded in any action seeking to avoid an assessment or cancel, annul or declare void any proceedings under this act. And in case the defect is substantial the court shall of its own motion determine the rights of the parties, validate the proceedings and assess the costs as justice may require if said court shall find cause for such validation or such action should have been taken in the first instance and all parties interested are before the court.

§ 31. In case any drainage shall have been established or constructed or established and partly constructed under the provisions of chapter 98 of the Session Laws of 1905, any provisions thereof inconsistent herewith are hereby saved and retained as provisions governing such drainage.

§ 32. Certain Provisions Saved and Retained] In case of any pending petitions for drainage under chapter 98, Session Laws of 1905, where the same has not been established, the provisions of Chapter 98, Session Laws of 1905, are hereby saved and retained as provisions governing such drainage.

§ 33. Invalid or Abandoned Proceedings] If any proceeding for the location, establishment or construction of any drain under the provisions of chapter 98 of the Session Laws of 1905 have been heretofore enjoined, vacated, set aside, declared void, dismissed or voluntarily abandoned, or if any such proceeding or like proceeding under this act be hereafter enjoined, vacated, set aside, declared void or dismissed or voluntarily abandoned in consequence of any error, defect, irregularity or want of jurisdiction affecting the validity of such proceeding or for any cause whatever the board of county commissioners may nevertheless proceed to locate a drain or drains under the same or different names and in the same or different locations from those described in the invalid or abandoned proceedings under the provisions of this chapter. In case any new proceedings be had resulting in the location of a drain in the same or substantially the same location as that described in the invalid

or abandoned proceedings then the board of county commissioners shall proceed to ascertain the real value of the services rendered, moneys expended and work done under any invalid or abandoned or dismissed proceedings, and the extent to which the same have contributed or will contribute to the location, establishment, construction or completion of such drain as subsequently established and constructed. This shall be done upon like notice as for hearing upon the equalization of the proportions of benefits or upon assessments, and the hearing thereon may be at the same time as the last mentioned hearings or either of them or at any other time, and the notice of the hearing hereon may be a part of the notice of the hearing upon the equalization of proportions of benefits or upon assessments or separate therefrom it shall in any case notify all persons interested to show cause why the determination of the board thereupon shall not be final. When finally fixed the value of the services rendered or moneys expended shall become a part of the costs of the drainage. The real purpose and intent of this section is to afford compensation for services rendered, work done and moneys expended under any invalid, dismissed or abandoned proceeding to the full extent to which the same contributed to the location, construction or completion of any drainage located after the invalid, dismissed or abandoned proceeding, but to such extent only and to save to the parties liable for assessment the full value of such services rendered, work done or money expended. It is further specifically provided that no use shall be made by any board of county commissioners in the laying out or completion of any drain or ditch under this act of any map, chart, survey or other work done under any former law or under this act without having paid therefor as herein specified; also, that all sums allowed for any work or material or moneys expended under the provisions of any previous law or under this act as herein provided shall be paid to the persons who have paid therefor in proportion to the amounts severally paid by such parties.

§ 34. Emergency] There being no adequate law upon the subject of drainage in this state and the public health, convenience and welfare of many sections thereof being endangered by accumulations of surface waters, and large tracts of agricultural lands in the state requiring immediate drainage, an emergency exists and is hereby declared to exist and this act shall be in force from and after its passage and approval.

§ 35. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 21, 1907.

EDUCATION

CHAPTER 135

(H. B. 214)

ESTABLISHING A UNIFORM SYSTEM OF EDUCATION FOR THE STATE OF SOUTH DAKOTA

AN ACT to Establish a Uniform System of Education for the State of South Dakota and to Repeal Certain Legislation Relating Thereto.

Be it Enacted by the Legislature of the State of South Dakota.

ARTICLE I

Department of Public Instruction

§ 1. State Supervision] The superintendent of public instruction shall be charged with the general supervision of all the county schools and the high schools and of all the city and county superintendents of the state.

§ 2. Superintendent—Duties of] He shall meet the county superintendents in convention at least once each year, at such points in the state as he may deem most suitable for that purpose, and by explanation and discussion endeavor to secure a more uniform and efficient administration of the school laws.

§ 3. He, personally or by an assistant, shall inspect all high schools and shall have the power to accredit them to higher institutions of learning.

§ 4. He shall render a written opinion to any county superintendent asking it, touching the exposition or administration of the school law, and shall determine all cases appealed from the county superintendent.

§ 5. All the necessary blanks to be used in transacting the business between county or city superintendents and the state superintendent shall be supplied by the state superintendent. He shall also compile a book of forms or blanks not furnished by the state, and all blanks used in a county or district must correspond with a form in such book.

§ 6. On or before the thirtieth day of October preceding each regular session of the legislature, he shall present a biennial report

to the governor, which report shall show the condition and needs of the public schools throughout the state and the workings of the educational system of the state.

§ 7. He shall attend teacher's institutes in the several counties in the state as far as may be consistent with other duties imposed by law, and assist by lecture or otherwise in their instruction or management. The state superintendent shall prescribe rules and regulations for holding county normal institutes.

§ 8. He shall on or before March 1st in each year, prepare and send to each county superintendent a list of the names of institute conductors, and county superintendents shall engage conductors for their county normal institutes from the list sent by the superintendent of public instruction.

§ 9. He shall on or before the 1st day of April of each year call a meeting of the county institute conductors, for the purpose of exchanging views relative to the best methods of teaching and for outlining, as far as practicable, a general plan for institute work.

§ 10. Examinations] Public examination for state certificates and life diplomas shall be held by the superintendent of public instruction at least twice each year, at such time and places as he shall select with a view to the accommodation of applicants for such certificates.

§ 11. It shall be his duty to prepare all questions for the examination of teachers by the county superintendents, and no county superintendent shall examine teachers with questions not thus furnished. Whosoever shall sell, barter or give away to applicants for certificates or to any other person the questions prepared by the superintendent of public instruction to be used by the county superintendents in the examination of teachers shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five or more than one hundred dollars.

§ 12. State Certificates and Life Diplomas] The superintendent of public instruction may issue two professional certificates, the state certificate, and the life diploma, as hereinafter provided. He shall keep a full record of all certificates issued by him and carefully file in his office all papers relating thereto and preserve said papers for the period for which the certificates were issued respectively. He shall, subsequent to each examination, send to each county superintendent a list of the persons receiving certificates.

§ 13. Life Diploma] A life diploma shall be valid during good behavior and shall authorize the holder thereof to teach in any public school of the state. Applicants shall, by examination or otherwise, show satisfactory proficiency in the following branches: Reading, orthography, penmanship, arithmetic, grammar, composition, geography, United States history, including South Dakota history, civics and

physiology and hygiene, and shall pass a satisfactory examination in physical geography, physics, algebra, geometry, general history of the pre-college grade, and in English language, and rhetoric, English and American literature, either economics or sociology, any two of botany, zoology, physiology, physics, chemistry, Latin, German, geology and mineralogy, astronomy, algebra, and trigonometry, all of the college grade and pedagogy, including principles, method, management, psychology and history of education.

Provided, that a diploma from the state university of South Dakota, or from any approved college having a regular course of study in which at least four years' work above an approved four year high-school course is required, may be accepted in lieu of an examination in the subjects named; if the applicant has in his college course pursued one course of pedagogical studies, and professional training comprising at least one-fourth work during at least eighteen months. In case the holder of such diploma has not taken the required work in pedagogy the deficiency may be made good by examination.

Provided further, that a diploma from any state normal school having a regular course of study in which at least two years' work above an approved four year high-school course is required, or from any other normal school having a regular course of study of the same extent and similar in character may be accepted in lieu of an examination in the subjects named.

An applicant for a life diploma, by examination or otherwise, must present evidence of at least forty months' successful experience in teaching and satisfactory evidence of good moral character.

An applicant for a life diploma upon college or normal school credentials shall present a certified copy of his diploma accompanied by a certified copy of the course of study pursued specifically showing the amount of class work in each subject, together with the standing in each branch.

§ 14. State Certificate] A state certificate shall authorize the person to whom it is issued to teach in any of the public schools of the state for the period of five years. Applicants for such state certificate shall, by examination or otherwise, show satisfactory proficiency in orthography, reading, penmanship, arithmetic, geography, English grammar, physiology and hygiene, United States history including South Dakota history, and shall pass a satisfactory examination in civil government, American literature, drawing, algebra, plane geometry, physical geography, physics or botany, general history, pedagogy and English language, composition and rhetoric. He must also present evidence of twenty-four months' successful experience in teaching.

Provided, that a diploma from any state normal school of South Dakota, having a course of study in which at least one year's work

above an approved four year high-school course is required, may be accepted in lieu of an examination in the subjects named.

Provided, further, that a diploma from any other school having a course of study equivalent in extent and similar in character may be accepted in lieu of an examination in the subjects named.

Provided, further, that applicants for the state certificate, upon normal or other school credentials, must show that the course of study pursued therein contained a course of at least eighteen months of pedagogy and professional training, comprising at least one-fourth work for said time. They shall present their credentials to the department of education in the same manner as is provided for applicants for life diploma. An applicant who presents evidence of graduation from a normal or other school shall also present evidence of eighteen months successful experience in teaching before being entitled to said certificate, provided that the superintendent of public instruction may issue to such applicant a provisional certificate for such probationary period. Every applicant for a state certificate shall submit satisfactory evidence of a good moral character.

§ 15. Renewal, Validation, and Revocation of Certificate] The superintendent of public instruction may renew a certificate upon the presentation by the applicant of satisfactory evidence of continued and successful experience as a teacher and satisfactory evidence of full attendance at a county institute held the current year. He may similarly renew a first grade certificate and primary certificate.

Provided, that a certificate which is permitted to lapse more than one year shall not be renewable.

The state superintendent may validate certificates issued by other state departments of the United States of the rank of the life diploma, state certificate, first grade or second grade certificate in this state, provided that the requirements upon which they are issued are equivalent to the requirements for corresponding certificates in South Dakota.

State certificates and life diplomas shall be revoked by the superintendent of public instruction for any of the causes enumerated in section 64 for the revocation of certificates by county superintendents, and in a manner similar thereto.

§ 16. Fees for State Certificates and Life Diplomas] Applicants for a life diploma, except resident graduates of the schools of this state, shall pay a fee of ten dollars, and similarly applicants for a state certificate shall pay a fee of five dollars, and for a provisional state certificate two dollars, provided that should an applicant fail in such examination, one-half of the fee shall be returned. All these fees shall be forwarded to the state department and the state superintendent shall pay the same into the state treasury, which with the money now on hand derived from this source shall constitute a fund to be used by the state superintendent of public instruction for the purpose of

conducting a teachers' reading circle and such other incidental and necessary expenses as may be required by the department of public instruction for the proper discharge of the duties of the office; and the moneys so collected shall be paid out only upon the warrant of the state auditor issued on vouchers of the superintendent of public instruction.

§ 17. Teachers' Reading Circle Board of Managers] The Teachers' Reading Circle Board of Managers shall consist of the president of the state educational association, the superintendent of public instruction and a member elected by the county superintendents of the state.

The president of the State Educational Association shall be the president of the board and the members of the board shall elect a secretary who shall not be of their number and who shall have no voice in the proceedings of the board. The secretary shall receive such salary as may be fixed by the board who shall also prescribe his duties. The board of managers of the Teachers' Reading Circle shall hold at least one meeting each year to select the books to be read, and shall have general charge of the Teachers' Reading Circle work in the state. The members of the board of managers shall receive no compensation, but their actual traveling expenses incurred in the discharge of their duties shall be paid from the fees collected for state certificates and life diplomas in the manner hereinbefore provided.

§ 18. Office Provided] An office shall be provided for him at the seat of government in which he shall file all papers, reports and public documents transmitted to him by the county superintendents each year, separately, and hold the same in readiness to be exhibited to the governor or a committee of either house of the legislature at any time when required, and he shall keep a faithful record of all matters pertaining to his office. All books presented to his office or purchased therefor shall be carefully preserved and catalogued by him. The educational library thus formed shall be open to the teachers of the state for reference and examination.

§ 19. Deputy Superintendent] He shall have the power to appoint a deputy who shall perform such duties pertaining to the office as the superintendent may direct and who shall receive such salary as the deputies of the other state officers.

§ 20. Salary of Superintendent] He shall receive such salary as is prescribed by law and also a sum not exceeding fifteen hundred dollars per annum for traveling and other expenses while traveling on the business of the department. The traveling expense account and certified bills for necessary office expenses, and for the printing of such blanks and reports as are required by law, shall be paid on the warrant of the state auditor.

ARTICLE II**County Supervision**

§ 21. Election of Superintendent] In each organized county at the first general election held after the admission of the state of South Dakota into the union, and every two years thereafter there shall be elected a superintendent of schools whose term of office shall be two years, and no person shall be eligible for more than four years in succession.

§ 22. Eligibility] No person shall be eligible to hold the office of county superintendent who is not the holder of a regular first grade certificate, or a certificate of higher grade valid in this state.

§ 23. Qualification] The county superintendent shall qualify on or before the first Tuesday in January of the year following the one in which he is elected, by taking the proper oath of office and executing a bond in the sum of five hundred dollars with two or more sureties to be approved by the board of county commissioners. The oath shall be subscribed upon the back of the bond, which shall be filed with the county auditor. The sureties of such bond shall be bound jointly and severally, and upon it an action or actions may be maintained by the board of county commissioners for the benefit of the district or person or fund injured by the conditions thereof.

§ 24. Vacancy] When the office of county superintendent shall become vacant by death, resignation, removal or otherwise, the county board of commissioners shall fill the vacancy by appointment, and the person so appointed shall hold his office until the election of county officers.

§ 25. Deputy County Superintendent] In counties having more than seventy-five schools the county superintendent shall have power to appoint one deputy, who shall receive such compensation as the county commissioners may provide.

§ 26. Prohibition from Holding Other Offices] The county superintendent shall not hold the office of county commissioner or school district officer.

§ 27. Salary] The county superintendent shall receive a salary payable monthly and to be determined as follows: By the value of the property in their respective counties as fixed by the state board of equalization for the preceding year, and by the population of their respective counties.

He shall be entitled to receive one mill on each dollar of the first one hundred thousand dollars, and three-eighths of one mill on each dollar from one hundred thousand dollars to six hundred thousand dollars, and one-fourth of one mill on each dollar from six hundred thousand dollars to one million, one hundred thousand dollars; and one-tenth of one mill on each dollar from one million, one hundred thousand dollars to two million, six hundred thousand dollars; and one

twentieth of one mill on each dollar on all sums above two million, six hundred thousand dollars. And in addition to the above named sum he shall receive for the first one thousand inhabitants within his county the sum of seventy-five dollars, for each additional one thousand inhabitants within the county, or major fraction thereof, he shall receive fifty dollars;

Provided, that he shall not receive more than fifteen hundred in any county nor any other compensation, except as provided in section 52.

Provided further, that in counties having an assessed valuation of less than three hundred thousand dollars, the salary shall not exceed two hundred dollars.

§ 28. Penalty] The county superintendent shall sign his name in the attendance register of each school he visits, showing the date thereof; and he shall carry a record book of such visits, which book shall be signed by the teacher of the school visited by him, and such book shall be filed with the county auditor along with the bill of such superintendent's salary for the last month of the calendar year; and it shall be the duty of the county commissioners to deduct from the salary of such superintendent for such last month ten dollars for each and every school in the county under the direct supervision of such superintendent and not visited by him within such calendar year.

§ 29. Mileage Allowed] The county superintendent shall receive five cents per mile each way for every mile necessarily traveled in attending such meeting of county superintendents as may be convened by the state superintendent at any time.

Provided, that such mileage shall not be regarded as compensation.

§ 30. Provide Office] The county superintendent may provide at the county seat a suitable office for the transaction of business, when not provided by the board of county commissioners, and they shall allow accounts for all necessary expenditures for the use and furnishing of said office and for necessary stationary and printing. All books and pamphlets, circulars of information and other publications from the bureau of information of the United States, and all official publications of this state and other public documents and books relating to education, officially received by him, shall be deemed public property and shall be kept in his office, and, with other public property and records, delivered to his successor. He shall furnish the board of county commissioners such statistics relating to the schools of the county and the officers thereof as they shall desire, and as shall enable them to perform their duties correctly.

§ 31. Duties of County Superintendent] The county superintendent of schools shall be charged with the general supervision of the schools of his county. In towns having less than one thousand inhabitants he shall have authority of direct supervision.

§ 32. He shall visit each school in his county as frequently as possible, at least once each school year, correcting any deficiency that may exist in the government of the school, in the classification of the pupils, or in the methods of instruction in the several branches taught; make such suggestions as he shall deem proper and necessary for the welfare of the school; note the character and condition of the school house, furniture, apparatus and grounds, making such suggestions to the district officers as will in his opinion improve the same. In case of flagrant or wilful neglect on the part of the school board to make the necessary repairs for the school or to correct unsanitary conditions or provide suitable water closets according to section 109 of the article relating to powers and duties of the district school board within thirty days after written notice he shall have power to order such repairs and changes as he may deem necessary and the school district shall pay expenses thus incurred from the district treasury not to exceed \$50.00 in any one year.

§ 33. He shall keep a complete record of his official acts.

§ 34. He shall keep a record of the name, age and post-office address of each candidate for a certificate to teach, standing in each study, and the grade, date of issue and expiration of each certificate granted. He shall keep on file the papers of applicants for special certificates, at least for the periods for which a certificate is granted.

§ 35. He shall keep a register of the teachers employed in his county, giving the name of teachers, district in which employed, date of opening and closing terms, salary per month, grade of certificate and date of superintendent's visits.

§ 36. He shall keep a record of all apportionments of the state and county school funds, and such other statistical records as shall be required in making reports to the superintendent of public instruction. In addition to his annual report he shall, whenever called upon by the superintendent of public instruction, make such special reports as may be required.

§ 37. The county superintendent of schools shall encourage teachers' institutes and associations, and shall labor in every practicable way to elevate the standard of teaching, urge the continual employment of successful and efficient teachers, and prevent by all proper means, the employment of those who are incompetent and inefficient and seek to make the employment of all teachers a responsible public duty, for the public advantage only, and free from favor and sectarian interest.

§ 38. It shall be the duty of the county superintendent to hold district institutes during the school year, and he shall actively and earnestly promote the same. In holding said institutes he may group two or more districts in institute organization. Said districts shall be so arranged that the teachers in each district, or group of districts, shall have the benefit of such institutes at least twice during the

school year. He may in his discretion close a part or all of the schools of his county, not to exceed two days in a school year for the purpose of convening his teachers in convenient places for teachers' meetings or for institute purposes. Provided that the teachers attending such meetings shall sustain no loss of pay.

§ 39. It shall be the duty of the county superintendent to encourage the formation of Teachers' Reading Circle in his county. He shall report on or before December fifteenth of each year to the secretary of the state Teachers' Reading Circle the enrollment of all persons in his county known to him to be pursuing the work of said circle, plans by which the work thereof is being carried on, and all matters of general interest thereto. He shall, under the direction of the superintendent of public instruction, arrange for an annual examination in the State Teachers' Reading Circle course in his county, and it shall be his duty to preside at the same or to appoint some competent person to do so; to collect all papers submitted and to forward the same promptly to the secretary of the board of managers. He shall co-operate as fully as possible with the board of managers of the State Teachers' Reading Circle in advancing the work of that organization.

§ 40. County Normal Institute] It shall be the duty of the county superintendent to hold annually a normal institute, between the first day of April and the fifteenth day of September, of not less than five days' duration, for the instruction of teachers and those who desire to teach, and he shall procure such assistance in addition to the conductor as he may deem necessary.

At the close of the normal institute, the conductor thereof shall immediately certify to the county auditor the dates of opening and closing said institute and forward to him a certified copy of his commission. The county auditor shall immediately present such data to the county treasurer, who shall thereupon transfer from the county general fund to the county institute fund the equivalent of ten cents per capita upon the school census of the county for the current year, provided, that if the per capita amount so ascertained shall be less than \$150 in any county then at least the sum of one hundred fifty dollars shall be transferred by the board of county commissioners to the county institute fund.

Provided, that the county commissioners may make additional appropriations to the county institute fund when in their judgment it is necessary in order to provide an effective institute. All disbursements of the institute fund shall be made upon warrant of the county auditor upon certified itemized bills, approved by the county superintendent for services rendered or expenses incurred in connection with the normal institute.

§ 41. Joint Institutes] The county superintendent may hold the county normal institute in his own county, or, he may hold the same in an adjoining county for the purpose of combining with such

other county or counties if in his judgment it is to the best educational interests of his county.

When two or more county institutes are combined and held in one county, all bills against the county institute fund shall be audited in the county where the institute is held, and all disbursements of the institute fund shall be made upon warrant of the county auditor upon itemized bills approved by a majority of the county superintendents holding such joint institute.

Counties holding joint institutes shall share the expense of such institute in such proportion as the number of children enumerated in the school census of each county bears to the total number of children enumerated in the counties so combined in the institute.

The county superintendents of the counties combined for institute purposes shall determine each county's share of the expense of the institute as above provided and shall send a certified statement of the same signed by a majority of the county superintendents to the auditor of each county so combined, whereupon the county auditor so notified shall issue a warrant on the institute fund in favor of the county treasurer of the county in which the institute was held for his county's share of said expense and the said county treasurer shall place it to the credit of the institute fund of his county.

§ 42. District Officers' Meetings] The county superintendent shall require the district school officers of his county to assemble at one or more convenient locations for the discussing of questions intended to promote the school interests of the county. Said meetings shall be held between the first day of December and the first day of May annually. In his discretion he may close all the schools of his county and require the attendance of the teachers at such meeting, provided that he shall give the interested persons ten days notice and shall also notify the state superintendent of public instruction of such meeting.

Provided further, that school officers shall receive a per diem of one dollar and fifty cents and five cents per mile each way for every mile necessarily traveled in attending the same, which shall be paid from the district treasury. If the teachers are required to attend, they shall sustain no loss of pay.

§ 43. Examination of Officers' Accounts] It shall be the duty of the county superintendent at least once each year to notify the various district school officers of the time and place he will meet with them, and personally or through his deputy, to determine the accuracy of the school officers' records and to advise them as to the proper form of keeping such accounts and it shall be the duty of said officers to bring or send said records of their respective offices to the superintendent or his deputy at the place and time specified in said notice. Should any such officer fail to make his report according to law and at the time required, the county superintendent is authorized to pro-

cure the same by examination of the records, files and accounts of such officer for the purpose of obtaining such information. It shall be the duty of the county superintendent to file with the chairman of the district board a certified statement of the condition of the records, accounts and funds of the treasurer and clerk as shown by said examination.

§ 44. Medium of Communication] The county superintendent shall at all times conform to the instructions of the superintendent of public instruction as to matters within the jurisdiction of the latter. He shall serve as a medium of communication between the superintendent of public instruction and the district officers.

§ 45. Power to Administer Oaths] The county superintendent shall have power to administer oaths of office to all subordinate school officers in his county and to certify to the same; and district clerks and chairmen are hereby empowered to administer oaths in all matters to which their respective districts may be a party.

§ 46. Power to Close School] The county superintendent shall have power to close any school under his supervision on account of contagious disease, or for any other good and sufficient cause known to him.

§ 47. Census Enumeration Report] On or before the first day of July in each year, each county superintendent shall report under oath to the commissioner of school and public lands the enumeration of persons of school age in each school district in his county, according to the census of the school districts as hereinafter provided. And this enumeration shall also be used by the county superintendent as a basis for apportioning the county general school fund.

§ 48. Apportionment of School Money] The county treasurer shall on or before the fifth day of January and July furnish the county superintendent with a statement of all moneys in the county treasury belonging to the county general school fund, and shall pay the same, upon the order of the superintendent, to the treasurers of the respective public school corporations of the county. The county treasurer shall also pay at such times as are required by law, to the treasurer of each school corporation, all of the school money collected for such corporation, and shall take duplicate receipts for the money paid. He shall send one of the receipts to the clerk of the said school corporation.

§ 49. The county superintendent shall on the tenth day of January and July in each year apportion the money in the county treasury belonging to the county general school fund to the several school corporations within the county in proportion to the number of children of school age residing therein. He shall also draw orders on the county treasurer in favor of the several school treasurers of the county for the amount apportioned to them, and shall take their receipts therefor.

§ 50. County General School Fund] The county general school fund to be thus apportioned shall consist of the money received from the income of the permanent school fund of the state as apportioned to the several counties by the commissioner of school and public lands, and the money derived from the tax levy of one dollar on each elector in the county, and also the fines as provided for in section 398 of chapter 35 of Penal Code.

§ 51. Annual Report to State Superintendent] The county superintendent shall on or before the first Monday of September of each year, make a report to the superintendent of public instruction containing a full abstract of the reports made to him by the district officers and such other matters as he shall be directed to report by the said superintendent, and as he himself may deem essential in exhibiting the true condition of the schools under his charge. Should he fail to make such report he shall forfeit to the school fund of his county the sum of one hundred dollars, and shall besides be liable for all damages caused by such neglect.

§ 52. Failure of District Officers to Report] If any district officer fails or neglects to transmit or deliver to the county superintendent the annual report of his district at the time required by law, it shall become the duty of the county superintendent to visit said district officer at his residence in said district and obtain such report. Upon sworn statement of such visit being filed with the county auditor, the county commissioners shall order the sum of five dollars to be transferred from the general fund of said district to the county general fund and a county warrant for that amount shall be issued to the county superintendent.

§ 53. Superintendent to Give Advice] The county superintendent of schools shall when requested give advice relative to school matters to any school officer or person within the county; but such advice shall be advisory only.

§ 54. Teachers' Certificate] The state superintendent of public instruction shall be authorized to issue teachers' certificates of the following grades: A first grade certificate valid for not to exceed three years, a second grade certificate valid for not to exceed two years, a third grade certificate valid for not to exceed one year, and a primary teachers' certificate for not to exceed five years. The requirements for all these certificates shall include both scholastic and professional ability. A complete certificate shall certify the scholastic and professional requirements, skill in teaching, and moral character. Written answers for the scholastic examination hereinafter provided for shall be read and marked under the direction of the state superintendent of public instruction, and the markings for the professional requirements shall be given by the county superintendent who shall also be the judge of skill in teaching and moral character of the applicant.

§ 55. First Grade Certificates] A complete first grade certifi-

cate certifying to scholastic requirements by the state superintendent and to professional requirements, skill in teaching and moral character by the county superintendent in whose county the examination is held, shall be valid in any county of the state, in all grades below the high school. Applicants for certificates of this grade shall pass an examination in orthography, reading, writing, arithmetic, geography, physical geography, English grammar, physiology and hygiene, with special reference to the effects of alcoholic drinks and narcotics upon the human system, history of the United States, civil government, current events, American literature, South Dakota history, drawing and didactics.

§ 56. Second Grade Certificates] A complete second grade certificate for both scholastic and professional requirements, signed by the state superintendent and the county superintendent, as indicated above for first grade certificate, shall be valid in all grades below the high school in the county in which the examination is held, and may similarly be made valid in any county by the endorsement of the county superintendent of said county. Applicants for certificates of this grade shall pass examination in orthography, reading, writing, arithmetic, physiology and hygiene with special reference to the effect of alcoholic drinks and narcotics upon the human system, geography, English grammar, history of the United States, civil government, South Dakota history, didactics and drawing.

§ 57. Third Grade Certificates] A third grade certificate valid in grades below the high school only in the county where issued and in such district as the county superintendent shall designate upon its face and signed by the state superintendent and county superintendent, may be issued in the discretion of the state superintendent to those candidates who have failed in their examination to measure up to the requirements of the department for the second grade certificate. No teacher shall be entitled to receive more than two third grade certificates.

§ 58. Primary Certificates] A primary teacher's certificate shall authorize the holder thereof to teach in the kindergarten and first and second grades only in cities and towns, and shall be issued on examination in the following branches: Reading, writing, orthography, arithmetic, physiology and hygiene with special reference to the effects of alcoholic drinks and narcotics upon the human system, geography, English grammar, history of the United States, South Dakota history, drawing, didactics, and in questions in kindergarten and primary methods. The primary teacher's certificate shall be valid in the county where issued and may be made valid in other counties by the endorsement of the county superintendent.

§ 59. Regulations for Holding Examinations] The regulations for holding the examinations by the county superintendent in each

county and the required standards upon which the various certificates shall be issued shall be prescribed by the state superintendent of public instruction.

Provided, that no person shall be entitled to a certificate of any grade who has not attained to the age of eighteen years and who does not present evidence of good moral character.

Provided further, that applicants for first, second or third grade certificates, and for primary teachers certificates, shall pay a fee of one dollar. All such fees shall be collected by the county superintendent and deposited with the county treasurer, one-half to the credit of the institute fund and one-half to the credit of the general fund of the state, to be turned into the state treasury, and it shall be placed to the credit of the same fund as fees for state certificate and life diplomas.

§ 60. Time of Examinations] The time for regular examinations shall be uniform throughout the state and the examination shall be conducted by the county superintendent in each county, or by persons appointed by him strictly according to regulations prescribed by the department of public instruction.

An affidavit may be required of such examiner, certifying that the regulations regarding such examinations have been fully observed. Such public notice shall be given of the time and place and regulations governing the examination, as the superintendent of public instruction may determine. The local expense for the examinations herein provided for in each county shall be paid by the county in which said examinations are held. The necessary expenses incurred by the superintendent of public instruction in carrying out the provisions of this act shall be paid from the appropriation made for the maintenance of the department of education.

§ 61. Teachers to Draw Pay] The regular examinations shall be public and the teachers desiring to take the same may dismiss their schools for that purpose for a period not exceeding two days in each year, without loss of pay.

§ 62. Special Certificates] Any county superintendent may, on his own examination, issue a certificate of the first, second or third grade to applicants who present satisfactory proof that they were unable to be present at the public regular examination. Such certificate shall be termed a special certificate and shall be valid only in grades below the high school in a district specified on its face and until the next succeeding public regular examination.

§ 63. Prohibition on Teaching] No person shall be allowed to teach in any of the public schools of this state nor draw wages as a public school teacher who is not the holder of a valid teachers' certificate issued pursuant to the provisions of this and the preceding articles.

Provided, that in cities and other independent districts persons exclusively engaged in teaching music, drawing, penmanship, bookkeep-

ing, foreign language or kindergarten method shall not be required to hold a county certificate.

§ 64. **Revocation of Certificates]** The county superintendent is hereby authorized and required to revoke at any time first, second or third grade certificates and primary teachers' certificates for any cause which would have prevented the issue of the same, for incompetency, immorality, intemperance, violation of the state law, cruelty, general neglect of the business of the school, and for refusal and neglect to attend regularly a county institute and at least one district institute each year, after due notice, provided that holders of first or higher certificates, in force, who have attended regularly at least four normal institutes may be excused by the county or state superintendent, in his discretion, from attendance at county institute for such current year.

§ 65. The county superintendent within ten days after his decision to revoke a certificate, shall transmit a written statement to the person accused stating the ground upon which said certificate was revoked and a copy of the statement shall be forwarded to the state superintendent of public instruction. The aggrieved person desiring to appeal from said decision within ten days after receipt of such notice, shall serve a written notice of appeal from said decision on the state superintendent of public instruction, which notice shall specify the grounds upon which the appeal is taken. The state superintendent shall provide for a fair review in the case of an appeal from the decision of a county superintendent.

ARTICLE III

§ 66. **School Corporations]** Any school district containing one or more schools except those governed by the provisions of Article XI relating to cities, towns and adjacent territory organized as independent districts, are for the purposes of this chapter defined to be school districts.

§ 67. In all counties organized for school purposes under the district system, each school district shall be and remain a school district corporation until changed as herein provided. Each township in every county in this state which consists of territory not organized into a civil township shall be and remain a school district corporation until changed as herein provided:

Provided further, nothing in this article shall be construed to alter the boundary lines of any school district or of any school township organized prior to the passage of this chapter, except as herein provided.

§ 68. In any county now, or hereafter organized, the county commissioners shall divide the county or the settled portions thereof into school districts. In the formation of such districts and the for-

mation of their boundaries as provided for in this section, boundary lines of congressional townships shall be made the boundary lines of the districts;

Provided, that the commissioners may, at their discretion, when for the best interests of the schools, organize one or more congressional townships into one school district;

Provided further, that no district shall be thus formed in which there are not at the time of its formation at least ten children of legal school age.

§ 69. Division of District] In any county school districts may be divided as follows: Upon receipt of a petition signed by at least one-third of the qualified electors of any district, it shall be the duty of the district clerk to post a notice on the door of each school house in said district, calling an election for the purpose of dividing said district into new districts.

Provided, that said petition and posted notices shall contain a plat of the proposed division, and a copy of said plat shall be posted by the district clerk at the polling place on the day of election;

Provided further, that said petition shall be filed with the district clerk at least twenty days prior to said election and said notices shall be posted at least ten days before said election, specifying the time and place thereof.

The election shall be held on the second Tuesday of March, at a convenient place designated by the school board at a regular or special meeting thereof;

The provisions appertaining to the election of district school officers shall apply to this election as near as applicable. If a majority of the votes cast at this election are in favor of division, and said petition and poll book of said election are on file with the county auditor, the board of county commissioners and the county superintendent shall, at the next regular meeting of the board of county commissioners in April following such election, divide the said district in accordance with the return of said petition and election. Any district which comprises two or more civil townships may be divided in accordance with said petition and election.

At the regular meeting of the board of county commissioners in July following said election, the board of county commissioners and the county superintendent shall make an equitable apportionment of the property and indebtedness (other than bonded) of the district among the new districts formed therefrom;

Provided, that should there be any bonded indebtedness outstanding against the district, the county commissioners shall levy a tax annually on the property of the new districts formed therefrom sufficient to pay the interest and principal of the bonds as the same become due. The county treasurer shall apply such tax to the payment

of said bonded indebtedness, and when the bonds are paid and cancelled the county treasurer shall place the unused balance, if there be any of such tax, to the credit of the districts formed therefrom.

§ 70. Formation of Township Districts] Upon the receipt of a petition signed by a majority of the qualified electors of any civil township in said county having districts smaller than civil townships, the county commissioners and the county superintendent of schools shall declare that the school districts shall comprise a school township district, and the county superintendent shall appoint the necessary officers as hereinafter provided in section 90, who shall hold until the next election.

§ 71. Election of New Officers] In each new district formed by division as provided for in section 69 the officers thereof shall be chosen at the annual school meeting following. The clerk of each original school district shall, on or before the first Tuesday in July following the division as provided in section 69, forward to the county auditor a certified statement of the finances of the district, including the bonded and other indebtedness. The treasurer of each original district shall also within the same time turn over to the county treasurer all money belonging to said district, and such money shall be apportioned to the districts succeeding as provided in the preceding sections.

§ 72. Name of School Corporation] Every school district which consists of a civil township shall be named the..... School District of.....county, state of South Dakota, with the name of the civil township inserted in the blank before the word school, and the name of the county in which it is situated inserted before the word county. Every school district consisting of territory not organized into a civil township, but which has been named by a distinctive name, shall have such distinctive name inserted in the blank before the word school. Every school district consisting of territory not organized into a civil township and which has no distinctive name shall be called District No of county, with its proper number inserted in the blank after the word No., and the proper name of county inserted.

§ 73. Change of Boundaries] After the boundary lines of the several school districts in a county are established, such boundaries at any regular meeting may be changed by the board of county commissioners and the county superintendent of schools upon a petition for such change signed by ten legal voters residing in the districts to be affected by the change; due notice having been given by the county auditor to the school boards of the districts to be affected by such proposed change, if in the judgment of the commissioners and the superintendent such change is for the best interest of the patrons of the schools.

Provided, that when petition is made for the formation of a district from parts of two or more counties, the commissioners of the said counties may in their discretion appoint a joint commission to establish the boundaries of the proposed district and to adjust all the accounts relating thereto. The said joint commission shall appoint the necessary officers in said district. It shall be the duty of the county superintendent of the county in which the school house of said district is located to fill all vacancies that may occur thereafter, to license the teacher for said school and to have supervision of the same. Whenever district boundaries shall be changed under the provisions of this article, it shall be the duty of the county commissioners and the county superintendent to make an apportionment of property and indebtedness as hereinafter provided.

The county superintendent of any county in this state shall have power and it shall be his duty, whenever petitioned so to do by any land owner whose place of residence on such land in any school district in such county, or whose dwelling house thereon is more than three miles from the location of the school house in such district, to make an order attaching such land, not to exceed one hundred and sixty acres, to any adjoining school district, the school house in which is located within three miles or less of said residence or dwelling house, and thereafter said land shall be a part of the district to which it is so attached.

§ 74. School District a Corporation] Every school district established under the provisions of this article or heretofore established, shall be and is hereby constituted a district corporation for school purposes, and under its own proper name and number of such corporation may sue and be sued, contract and be contracted with, purchase, hold and use personal and real property for the purpose mentioned in this article and sell and dispose of the same.

§ 75. Judgment] Whenever any final judgment shall be obtained against any school corporation, the board thereof shall levy a tax upon the taxable property in the corporation for the payment thereof, and such tax shall be collected as other school taxes, but no execution shall issue against a school corporation. Such tax or taxes shall not be greater than two per cent in any one year, and any surplus fund in the treasury of the school corporation may be appropriated to the payment of a judgment. If the school board refuse or fail to levy such tax, the judgment creditor may apply to the board of county commissioners, who shall cause such tax to be levied upon the property of the school district. When collected it shall be paid over by the county treasurer to the judgment creditor, whose receipt therefor shall be delivered the same as money to the treasurer of the school corporation by the county treasurer. Such levy may be repeated until the judgment is paid.

§ 76. Courts of Jurisdiction] Justices of the peace shall have jurisdiction in all cases in which a school corporation is a party interested, when the amount that is claimed does not exceed one hundred dollars, and the party shall have the right to appeal as in other cases.

§ 77. Fines—How Collected] All fines and penalties not otherwise provided for in this chapter shall be collected by action in any court of competent jurisdiction.

§ 78. Plat of County] The county superintendent shall, within thirty days after the first school election held as provided herein, transmit to the superintendent of public instruction a plat of the county showing the boundaries and name of each school district therein. He shall also record a copy of the same, together with all the proceedings of the county board done under this article in a proper book kept for that purpose. He shall promptly furnish such officer with a correct plat, showing any changes at any time in the boundaries of school corporations. The superintendent of public instruction shall furnish directions for the suitable preparation and construction of such plats, in regard to the scale of marking, etc., in order to secure a uniform series of maps for binding for office use.

ARTICLE IV

District School Board

§ 79. Election] The school district annual election shall be held upon the third Tuesday of June in each year.

§ 80. Personnel of the Board] The district school board of each school district shall consist of a chairman, a clerk, and a treasurer who shall be elected at the time of the school district annual election, each for a term of three years, as follows:

A chairman in 1907 and every three years thereafter.

A clerk in 1908 and every three years thereafter. A treasurer in 1909 and every three years thereafter.

Provided that school officers duly elected and qualified at the time of the passage of this act shall continue to serve as officers till the expiration of their respective terms of office.

§ 81. Annual Election] Not less than ten days before the election required under the provisions of this article, the district clerk shall post notices in three public places in the district. Said notices shall specify the time and place of holding the election, and the hours during which the polls shall be kept open.

The chairman and clerk of the district board shall serve as judge and clerk of the election. If they are not present at the time of opening the polls, voters present may select a judge and clerk from their number. The polls shall be open at 2 p. m. and kept open two hours in the district having but one school, and four hours in districts

having more than one school. All persons who are qualified electors under the constitution of the state shall be qualified to vote at any school district election. The voting must be by ballot, and the polls and tally list supplied through the county superintendent, must be kept and returned to the district clerk, who shall upon receipt of the same issue the certificate of election to the persons receiving the greatest number of votes as shown by the certified returns;

Provided, that in case of a tie in the election of an officer, the contest shall be settled at once by lot by the board of election.

Provided that at the annual school district election the electors shall have authority to instruct the board in matters pertaining to the management of the schools for the coming year. They shall be called to order for this purpose at three o'clock p. m. or as soon thereafter as practicable. The chairman of the school district board shall act as chairman of the meeting and the clerk shall keep the minutes of the meeting in the permanent records of the school district. At this meeting the electors may instruct the board and it shall be their duty to carry into execution all such instructions, pertaining to the branches to be taught in addition to those prescribed in section 138: the time at which the schools of the district shall be held: the amount of tax levy, to direct the repair of the school houses, fixtures and out-buildings; and for the removal of the school house to a more convenient location, for the erection of a new one, or the sale of an old one, and the lands belonging thereto; and upon any other subject pertaining to the schools. At this meeting it shall be the duty of the clerk and treasurer to give approximately the facts that will be contained in their respective reports. And it shall be the duty of the district board to carry into execution all such instructions upon a majority vote of the electors of their district;

Provided that it shall be the duty of the district board to furnish, equip and supply all the schools in the district according to the several necessities of said schools, and with as nearly equal school advantages as possible.

Provided, further, that nothing contained herein shall prevent the district board from exercising a sound discretion as to all matters pertaining to the duties of their office not specially provided for by law.

§ 82. Qualification] Such officer and member elected under the provisions of this article shall qualify on or before the second Tuesday in July following his election, and shall hold his office for the number of years for which he is elected and until his successor is elected and qualified.

§ 83. Failure to Qualify] If any person appointed or elected to a school district office shall for one month after the time fixed by law, fail to qualify or give bond as provided by law, the office shall be

deemed vacant, and the county superintendent shall, when notified of such vacancy proceed to fill the same by appointment.

§ 84. Oath] All school district officers before entering upon the duties of their respective offices shall take an oath to support the constitution of the United States and of the state of South Dakota, and faithfully and impartially to perform the duties of such office.

§ 85. Bond Void] The school treasurer shall, on or before the second Tuesday in July following his election, and before entering upon his duties, give a bond to the school district, conditioned that he will honestly and faithfully discharge his duties as treasurer; that he will render a true account of all funds and property that shall come into his hands, and pay and deliver the same according to law; said bond shall become void when said treasurer has completed his term and all his acts shall have been approved by the school board and a majority of the electors at any regular or regularly called special meeting.

Provided, that a bona fide deposit of school funds in the name of the school district in any bank or depository selected by a majority of the school electors of any school district shall relieve the school treasurer from the liability for loss of said deposited funds while on deposit therein. Such bond shall be in such penal sum as may be fixed by clerk and chairman of the board, but not less than double the sum, as nearly as can be ascertained to come into his hands in any one year. shall be signed by two or more sufficient sureties, and shall be approved by the clerk and chairman of the board, provided that in all cases where the bond required of the treasurer shall be greater than one thousand dollars the treasurer elect may secure a surety bond subject to the approval of the clerk and chairman of the board, the same as of other bonds and the cost of said bond shall be paid by the district. In case the chairman and clerk refuse or neglect to approve the bond of the district treasurer and the sureties thereto, such treasurer may present the same to the county superintendent and serve notice thereof upon said chairman and clerk; and upon due proof of such notice being made to the county superintendent, he shall, unless good cause for delay appear, proceed to hear and determine the sufficiency of the bond and sureties thereto, and may approve the same, and such approval shall be in all respects valid.

Whenever a treasurer of a school district by election or appointment becomes his own successor he shall give new bonds, and all such officers shall qualify anew upon entering a new term.

§ 86. Bond of Clerk] The clerk of the school board shall, on or before the second Tuesday in July following his election, and before entering upon his duties, give a bond to the school district conditioned that he will honestly and faithfully discharge his duties as clerk, that he will render a true account of all property that shall come into his hands as such clerk and deliver the same according to law. Such bonds

shall be in the penal sum of one hundred dollars, shall be signed by two or more sufficient sureties, and shall be approved by the chairman and treasurer. In case of neglect or refusal to approve such bond, it shall be approved in such manner as provided in the preceding section for the approval of the bond of the treasurer.

§ 87. No officer of the school district shall perform any duties of the office nor receive any of the property, money, books or papers belonging to the office, nor any money from the county treasurer or warrant thereof, until he has fully qualified as required by law.

§ 88. New or Additional Bond] The county superintendent may at any time require a new or additional bond for the district officers whenever it may be deemed necessary by him, or upon the failure, death or removal from the county of any one of the sureties. All such bonds shall be filed with the county auditor, and in case of the breach of any conditions thereof, the county superintendent shall cause an action to be commenced and prosecuted thereon in the corporate name of the school district, and all moneys so collected shall be paid into the county treasury to be applied to the use of the schools of said district. If the county superintendent either fail or refuse to bring such action upon the breach of the bond, then any taxpayer of the district may cause such action to be commenced, and the necessary expenses of such action shall be paid, unless otherwise ordered by the court, out of the county treasury from the funds apportioned to such district.

§ 89. Bonds and Oaths Filed] All official bonds of school district officers shall be filed with the county auditor, and he shall give the county superintendent immediate notice of the same. The oaths and reports of school district officers shall be filed with the county superintendent.

§ 90. Temporary School Officers] Whenever a school district shall be formed, the county superintendent of schools shall appoint temporary officers for such school district, who shall serve until the first annual school election following and until their successors are elected and qualified.

§ 91. Vacancies] Whenever a vacancy may occur, from any cause, in any school district office under the supervision of the county superintendent, he shall fill such vacancy by appointment, and such officer shall hold such office until the next election, when the vacancy shall be filled by a vote of the people.

Incapacity of Officer] If from sickness or any other cause such officer shall become incapacitated or unable to attend to the duties of his office, the fact shall be certified to the county superintendent by the clerk of the school district. If the clerk fails to notify the county superintendent of any vacancy that may exist, it shall be the duty of the remaining officer or officers to do so, and a successor shall

be appointed to fill such vacancy, and such appointment shall be held official until the next regular election.

§ 92. Meetings of Board] District boards shall hold three regular meetings each year for the transaction of business to-wit: On the second Tuesday in July, the last Tuesday in November and March at such place and hour as may be fixed by the school board;

Provided, that the district clerk shall when requested by a majority of the board, call a special meeting at any time by giving written notice to each member of the board.

§ 93. Special Meetings of Voters] Provided, that in any school district five legal voters may petition the clerk to call a special meeting of the voters at any time, and it shall be the duty of the clerk to call such meeting by posting such notices at least ten days prior to the time of the meeting in three of the most conspicuous places in the district. Such notices shall give the date, hour, and object of the meeting.

§ 94. Chairman—Duties of] The chairman shall preside at all meetings of the board. In his absence the chairman pro tempore shall preside. The chairman shall perform such other duties as are prescribed by this article.

§ 95. Clerk—Duties of] The clerk of the board shall keep an accurate record of all proceedings of the board, give or post all notices, make out all reports and statements, shall take census of the children of legal school age in his district as hereinafter provided, and perform all other duties required by law or by order of the board.

§ 96. Clerk—Annual Report] The clerk of each district shall, on or before the first day of August of each year, make, sign, transmit, or deliver to the county superintendent, an annual report in writing covering the preceding school year and including all the facts and statistics of the school district which are required to be included in the county superintendent's state report and in the same order therein required, except any item therein peculiar to the county and not belonging to the district. He shall also report the branches of study in the graded and ungraded schools separately, the names and addresses of the district school officers, and the dates when their terms severally expire, and all other facts and statistics which the county superintendent may require for his report to the superintendent of public instruction.

§ 97. Clerk—All District Meetings] The district clerk shall be clerk of all district meetings, but if such clerk shall not be present, or being present shall refuse to act at such district meeting, the voters present may appoint a clerk for such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

§ 98. Clerk—Draw and Sign Warrants] The clerk shall draw and sign all warrants for the payment of money for the purpose legal-

ly ordered by the board, and every such warrant shall be countersigned by the chairman of the board. No warrant shall be drawn by the clerk except upon the presentation of a bill for the service rendered, duly certified, and the same shall be retained by him as a voucher and placed on file in his office.

§ 99. School Census] It shall be the duty of the clerk of the school district board or clerk of the board of education or some person employed by him in each district in the state on or before the first Monday in June of each year to take the census of all children under twenty-one and over six years of age, residing in the district.

In all cases where the clerk employs another person to take the school census, before entering upon the duty of taking the school census such person shall take and subscribe an oath to perform faithfully the duties of census enumerator of such school district to the best of his ability and that he will by a house to house visitation or by conference with a member of each family enter in the said census names of all children of legal school age, as herein defined, and none other, and said oath he shall file with the county superintendent of schools.

The census shall show the age of the child on May first, the name of the parent or guardian of each, and shall be filed with the county superintendent on or before the said first Monday in June. The clerk shall also place one copy of said census in the register of each school in the district. In taking the census the clerk, either by a house to house visitation or by conference with a member of each family shall determine positively the data regarding all children entitled to be enrolled on the census as herein defined. If any clerk or person employed by him shall wilfully enter and return in said census the names of any children not lawfully entitled to enrollment on account of either age or residence he shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one hundred dollars. For the labor incurred in taking the census, the clerk or person employed by him shall be entitled to receive such remuneration as shall be fixed by the district board, which shall be paid from the district treasury. No clerk or person employed by him shall receive pay for the service of taking the census until said report shall have been approved by the county superintendent and the chairman of the district board notified by the county superintendent. Provided, that said remuneration so received shall not be counted as salary.

§ 100. Census, Compared by County Superintendent] It shall be the duty of the county superintendent of schools to receive such census from each school district clerk in his county, and to inspect carefully the same, and by comparison with the previous census of said district, and other means verify its accuracy, and if on examination and comparison he find the said census to be inaccurate, insufficient, or including names not properly enrolled in the school district, it shall be his duty to cause a new census of the said school district to

be made, and the expense thereof shall be charged to and paid by the said district so making the insufficient, false or fraudulent return. In which case the first census enumerator shall be entitled to no remuneration.

§ 101. Census Sent to Commissioner of School and Public Lands] On or before the first day of July in each year, each county superintendent shall report under oath to the commissioner of school and public lands the enumeration of persons of school age in each school district in his county, according to the census of school districts as hereinbefore provided. Upon receipt of such report of the enumeration of children residing in each school district in the state, it shall be the duty of the state commissioner of school and public lands to inspect carefully each report so received and, by comparison or otherwise, to satisfy himself of the accuracy thereof, and if upon such inspection, comparison, or by other means he shall become satisfied that the census of any school district as reported is insufficient, false, or fraudulent, it shall be his duty to provide for a re-enumeration of the said school district, and the expense of such re-enumeration shall be paid by the school district so re-enumerated. And upon the census of all of the school children secured, as hereinbefore provided, he shall apportion the school funds as provided by law.

§ 102. Treasurer—Duties of] The school treasurer shall keep such accounts and make such reports as are required of him by law. He shall pay no money out of the school funds in his hands except upon the warrant of the school board, signed by the clerk and countersigned by the chairman. He shall pay all warrants properly drawn and signed when presented so long as there is any money in his hands or subject to his order for their payment, and shall draw all money in the hands of the county treasurer belonging to his district, at least once every three months in each year.

§ 103. Whenever a warrant is presented to the treasurer for payment, and there is no money in his hands or subject to his order for the payment of such warrant he shall endorse on such warrant, "Presented for payment this day of 190.. and not paid for want of funds," and sign such endorsement. If he has in his hands or subject to his order money for the part payment of such warrant, he shall make such part payment and endorse the sum on the warrant and add "balance not paid for want of funds," signing the same. He shall keep a correct register of all warrants so presented and endorsed. Every warrant thus presented and endorsed shall draw interest for the amount unpaid at seven per cent per annum until paid.

Provided, that whenever there shall come into the hands of the treasurer, or subject to his order, money applicable to the payment of any warrant which has been so presented and registered, the treasurer shall notify in writing, by mail, the drawee of such warrant, at

his last known place of residence, to present such warrant for payment, and interest shall cease, upon every such warrant within ten days after such notice shall have been sent and such money shall be held for the payment of such warrant.

§ 104. Manner of Drawing Warrants] Every warrant drawn by the clerk of the district board on the district treasurer shall specify the purpose for which the money is paid, the fund on which it is drawn, and the person, firm or corporation to whom paid;

Provided, that no warrant shall be issued except for indebtedness incurred prior to its issue.

§ 105. Salary of School Officers] The chairman shall receive an annual salary of five dollars, and such remuneration for attending such meeting of the school officers as provided for in section 42, and shall receive no other compensation for his services as a district officer.

The district clerk shall receive a salary of five dollars per annum for every school or department thereof in the district and in like manner the district treasurer shall receive five dollars per annum for every school or department thereof in the district.

Provided, that in computing the salary of such offices no school shall be included unless the same shall have been taught at least three months the preceding school year;

Provided, that such salary shall not exceed twenty-five dollars per annum for the treasurer. They shall each receive remuneration additional for attending such meetings of the school officers as provided for in section 42.

Provided, further, that the county superintendent shall, upon receipt of the annual report of the clerk and treasurer, if correct, complete, and received on or before August first of each year, notify the chairman of said school board that such reports have been received. Thereupon the chairman of the school board shall sign the warrant for their annual salary and no part of said salary shall be paid until said notice.

§ 106. Prohibition on School Officers] No school officer shall be employed to teach, nor to draw public money as a teacher in any district while holding such office, except by permission of the county superintendent.

ARTICLE V

§ 107. Powers and Duties of the District School Board] The district school board shall have general charge, direction and management of the school or schools of the district, and the care, custody and control of all the property belonging to it, subject to the provisions of this article. They shall organize, maintain and conveniently locate

schools for the education of all children of school age within the district. If a petition signed by the persons charged with the support and having the care and custody of seven or more children of school age all of whom reside not less than three miles from the nearest school, is presented to the board asking for the organization of a school for such children, the board shall organize such school and employ a teacher therefor, if a suitable room for such school can be leased or rented at some proper location not more than three miles distant from the residence of any one of such children.

§ 108. Transportation] When pupils reside at an unreasonable distance from their nearest school house in the school district the school board shall make reasonable financial provision for the transportation of such pupils to some other school in the district, or for their tuition in some other district and for their transportation thereto, if an unreasonable distance from their residence, and shall establish routes of travel and provide methods of transportation subject to the approval of the county superintendent of schools, who shall also determine what shall constitute an unreasonable distance;

Provided, that such provision shall be only for actual attendance at public schools;

Provided, further, that in making arrangements for transportation the board shall take into account the age of the pupils and their physical condition.

§ 109. The district school board shall make all necessary repairs to the school houses, outbuildings and appurtenances, and shall furnish fuel and all necessary supplies for the schools.

Water Closets] They shall give special attention to the matter of convenient water closets or privies, and provide on every school house site, not within an independent city or town district, two separate buildings located at the farthest point from the main entrance to the school house, and as far from each other as may be, and keep them in wholesome condition and good repair. In independent city or town districts where it is inconvenient or undesirable to erect two separate out houses, several closets may be included under one roof, and if outside the school house each shall be separated from the other by a brick wall, double partition; or other solid or continuous barrier, extending from the roof to the bottom of the vault below, and the approaches to the outside doors for the two sexes shall be separated by a substantial close fence not less than seven feet high and thirty feet in length.

§ 110. The district school board shall employ the teachers for the schools, of the district, and may dismiss any teacher at any time for plain violation of contract, gross immorality, or flagrant neglect of duty;

Provided that every contract for the employment of a teacher shall be in writing and authorized by a majority of the members of the district school board.

§ 111. Officers' Meetings] The district school officers shall attend meetings of school officers as provided for in section 42.

§ 112. Pupils from Other Districts] The district school board shall admit to the schools in the district pupils from other districts, when it can be done without injuring or overcrowding such schools, and make regulations for their admission and the payment of their tuition therein.

It shall be the duty of the board at the annual July meeting, each year, to make the assignment and distribution of pupils to and among the schools in the district, and in such assignment and distribution the board shall take into consideration the wishes of the patrons and the best interests of the pupils and district.

§ 113. May Discontinue School] Any school in the district may be discontinued by the district school board, for the purpose of combining two or more schools into one and to make arrangements for the transportation of the pupils to said school or schools if, in the judgment of the board, it is to the best interest of the pupils and the district.

§ 114. Appeal Against Closing School] The patrons of any school may appeal to the county superintendent and remonstrate against any discontinuance of such school, which shall be signed by at least one-third of the patrons belonging to said school. Such petition shall set forth the reasons for the continuance of said school, whereupon the county superintendent shall order a hearing thereon, giving out notice of the time and place of such hearing, to the patrons of the school and district board; and if, after such hearing, he shall deem it to the best interests of said school and district he may order the continuance of said school, which order shall be heeded by the district school board.

§ 115. Appeal—General] Any party dissatisfied with a decision of the district school board or board of education, relative to school matters, may appeal therefrom to the circuit court of the county at any time within thirty days after the rendering of such decision. Said appeal is taken by serving a notice of appeal upon the district school board or board of education, or any member thereof, and by filing such appeal and a bond for costs with the clerk of the school district or board of education. Said notice of appeal must state the decision appealed from, in a clear and concise manner. Said bond for costs shall be in the sum of one hundred dollars, with two or more sureties approved by the clerk of said circuit court, conditioned that appellant pay all costs therein that may be adjudged against him. When said notice of appeal and bond for costs is filed with the clerk of the school district or board of education as above, said school clerk shall, within

five days thereafter transmit to the clerk of the circuit court a certified copy of his record of the decision appealed from, and all original papers filed in his office in said matter, including the notice of appeal and bond for costs therein; and said clerk may be compelled by said circuit court, by an order entered upon motion to transmit such certified copies or original papers, and may be fined for neglect or refusal to transmit the same. For such transcript and return the said clerk shall receive the usual copying fees and mileage one way, same to be taxed as part of the cost of suit. And the clerk of the court shall receive and file said papers, and docket the same, in the same manner, and shall receive the same fees therefor as in appeals from justices' courts to circuit courts;

Provided, his costs need not be paid beforehand. When any matter is so appealed and filed with the clerk of the circuit court, it shall be docketed in the name of the dissatisfied party as appellant against the school district, by its proper name, as appellee, and it shall be tried anew in the circuit court according to the regular procedure provided by law therein and shall in all respects be treated as a regular case or action in said circuit court, save as hereinafter for expressly provided. No notice of trial or note of issue need be served to have such matter placed upon the trial calendar, and same shall come on for trial in its regular order, except as provided below herein; and the same proceedings shall be had and all judgments or orders therein shall be valid and mandatory, as by law provided in any other regular case or action or proceeding in said circuit court;

Provided, that above parties may agree upon the statement of facts in any actual case or matter tried anew thereon before the court in chambers or in open court, after proper appeal and consent of parties. In all of the above the circuit court shall render judgment therein and may render final judgment or make such order and direction therein as the circumstances of the case may require and as the very right of the case may appear and enforce the same upon execution or by mandamus or attachment as for contempt.

§ 116. Appeal to Supreme Court] Appeals relative to school matters may be taken from the circuit court to the supreme court of the state, and the same proceeding shall be had, and all judgments and orders therein shall be valid and mandatory as by law provided in any other case or action or appeal or proceeding in said supreme court.

§ 117. Assist Teacher] The district school board shall assist and co-operate with the teacher in the government and discipline of the schools, and may make proper rules and regulations therefor. They may suspend or expel from school any pupil insubordinate or habitually disobedient.

Provided, that such suspension shall not be for a shorter period than ten days nor beyond the end of the current term of school.

§ 118. Tax Levy] The district school board shall have power to levy upon the property of the district a tax for school purposes of not exceeding twenty mills on the dollar in a year, which levy shall be made by resolution of the board at their regular July meeting in specific amounts.

The clerk shall immediately thereafter notify in writing the county auditor of the total amount of tax so levied.

§ 119. Removal of School House] The school board shall have power to direct the removal of a school house to a more convenient location, upon a vote of the majority of the electors of the entire district;

Provided, that in districts in which there shall be but one school house a two-thirds majority vote shall be necessary to remove such school house from the center of the district to any other point in the district, except such removal shall be to the center of the district, in which case a majority vote shall be sufficient for such removal.

Provided, further, that any point within one hundred and sixty rods of the geographical center of the district shall be deemed the center for the purposes of this section.

§ 120. Annual Meeting of Board] At the annual meeting of the school district board in July of each year, it shall be the duty of the clerk and the treasurer to read their respective annual reports and the board shall verify them as provided in section 126 of this act.

The board shall levy such tax as the patrons shall have directed at the annual election, but it shall not exceed for all purposes two per cent of the taxable property of the district.

If any school district fails to hold in any school year at least six months of school in any school house in said district providing no legal discontinuance be had, it shall be the duty of the county superintendent to notify the county treasurer of the amount of money due said district from the apportionment fund for the semi-annual term ending June 30, of the preceding year, which amount shall remain to the credit of such district and no warrant be drawn therefor until said district shall have complied with the law, unless said district board made provisions for the instruction of the pupils for the required time in some other school. In case of failure in any district to levy tax sufficient to support a school for the number of months above named, the board of county commissioners shall levy a tax on the property of the district that shall be sufficient for the purpose.

§ 121. Purchase and Sale of School Property] The district school board shall purchase or lease such site for a school house as shall have been designated by the voters at a district meeting in the corporate name thereof, and shall move any school house in the district to any site designated by the voters at any regular or special district meeting, and shall build, hire or purchase such school house as the voters of the district in a district meeting shall have agreed upon.

out of the funds provided for that purpose, and make sale of any school house or property of the district, and, if necessary, execute a conveyance of the same in the name of the district, when lawfully directed by the voters of such district at any regular or special meeting, and shall carry into effect all lawful orders of the district.

Nat. Bank vs. School District, 6 Dakota 255.

§ 122. Acquiring School Site] It shall be lawful for any board or district officers to take and hold any land not exceeding two acres, situated upon a section line or upon a regularly laid out highway, legally chosen as a school house site by a lawful district meeting. If the owner of such land refuses or neglects to grant such site to the district or cannot be found, the superintendent of that county shall upon application proceed according to law to condemn and acquire title to the same in the name of said district;

Provided, that whenever a school house site shall have been selected by the properly constituted authority of school districts on common school or endowment lands of this state, not exceeding two acres in a square form and located on a section line or on a regularly established highway and at one corner of a legal subdivision and not within forty rods of any residence, without the consent of the owner thereof, and a plat of the lands so selected shall have been filed in the office of the commissioner of school and public lands, the board of school and public lands is hereby authorized to direct an appraisement of such site by the state board of appraisers, and the same shall be appraised in the manner provided by law for the appraisement of school and public lands. Such appraisement shall not be less than the minimum price fixed by the constitution for school and public lands.

§ 123. Upon the payment of the full amount of the appraised price of such site a conveyance shall be executed by the governor, attested by the commissioner of school and public lands, with his seal of office affixed; conditioned that should the same cease to be used for two successive years, for the purpose of maintaining a public school thereon, that the title shall revert to the owner of the legal subdivision of which said site forms a part.

§ 124. Assessor Shall Furnish List of Property to Clerk] Every township or county assessor shall on or before the first day of July in each year furnish to the clerk of each school corporation, the real property of which he assesses, a certificate of the valuation of all real property and of all personal property and of the total of these subject to taxation within the corporation for the current year.

§ 125. Commissioners Levy Tax for General Fund] The county commissioners of each county shall levy a tax of one dollar on each elector in the county for the support of the common schools, and no property shall be exempt from the collection of such tax by distress

or otherwise, which taxes, when so collected, shall be distributed to the several school corporations in the county in proportion to the number of children resident in the territory of each over six and under twenty-one years of age.

§ 126. Treasurer's Settlement with Board] At the annual meeting of the school board on the second Tuesday of July in each year, the incoming district board shall make settlement with the district treasurer, who shall at that meeting make his annual report in triplicate, one copy to be preserved in the treasurer's office; and upon approval of the same by the district board, one approved copy to be filed with the district clerk; and one approved copy to be transmitted by said clerk to the county superintendent on or before the first day of August of each year. On making said settlement it shall be the duty of the district board to compare the certified bills allowed by the board with the orders issued, also to compare the orders paid by the district treasurer the preceding year with the clerk's record of orders issued; and also compare the record of the money received and orders paid by said treasurer with his annual report, and if found correct the report shall be approved, the orders cancelled and filed with the district clerk. The board shall cause to be posted in three public places, or published in a newspaper of general circulation in the county, an itemized statement of the receipts and expenditures for the preceding school year.

§ 127. False Report—Penalty] Any clerk or treasurer of a school district who shall wilfully sign or transmit a false report to the county superintendent, or wilfully sign, issue or publish a false statement of facts purporting or appearing to be based upon books, accounts or records, or of the affairs, resources and credit of the school district, shall upon conviction be punished by a fine of not exceeding fifty dollars or by imprisonment in the county jail not exceeding fifteen days. Any clerk or treasurer of a school district who shall wilfully mutilate or destroy any of the books, accounts or records of his office, or who shall refuse to deliver to his successor in office all the books, accounts, records of his office upon demand of his successor for the same, shall be deemed guilty of a misdemeanor, and it shall be the duty of said successor to begin action immediately upon the official bond of such officer for recovery of such money or other property.

§ 128. Failure to Report] Any school district officer who is required by law to make a report to any other county or school district officer, and who shall wilfully neglect to make such report or fail to perform such official duties, shall forfeit and pay to the school funds of said county or district a penalty of not less than ten dollars nor more than fifty dollars, to be recovered from such delinquent officer, or from him and his sureties in the official bond, in a civil action to

be brought by the state's attorney in any court of record having jurisdiction.

§ 129. Notice of Tax Levy to County Auditor] It shall be the duty of the district clerk, on or before the 20th day of July in each year, to notify the county auditor of the amount of tax voted at the last annual meeting or levied by the district school board, and of any and all other tax of which notice has not previously been given. The notice shall be substantially in the following form:

District Clerk's Office,
School No.
.....County, South Dakota.
.....19.....

To the county auditor of County, S. D.

Sir: You are hereby notified that at a meeting of District No held on the day of the following tax was voted for the coming school year:

For tuition fund dollars
For general fund dollars
For interest and sinking fund dollars

Total dollars

(Signed)
District Clerk.

The rate per centum of all school taxes shall be calculated and fixed by the county auditor, who shall consolidate the amounts and extend the school tax in one column.

§ 130. Accounts—How Kept] All moneys apportioned by the county superintendent to the district or received from the district tax for tuition purposes shall constitute the tuition fund. All moneys received from other sources shall constitute the general fund. The treasurer shall keep one general account wherein he shall set down on the debit side all the money he shall receive as treasurer from all sources whatever each item of entry showing plainly the source of the particular payment to him with the date thereof; and he shall set down upon the credit side all the money he shall pay out for all purposes whatever, every item thereof showing to whom and for what purpose each payment was made, with the date thereof. The debit side shall always be balanced by the total of the credit side, with the funds on hand added thereto. At the beginning of every school year he shall open such account anew for that year, and the first item shall be an entry on the debit side of the balance on hand, if any, for the preceding year. He shall also keep a separate set of accounts of different classes of receipts and expenditures, showing severally the following:

Receipts

Amount received into the tuition fund from all sources.....
 Amount received into the general fund from all sources
 Amount received into the interest and sinking fund from all
 sources

Expenditures

Amount paid for tuition.....
 Amount paid for school houses, sites and furniture.....
 Amount paid for incidental expenses.....
 Amount paid as interest on bonds.....
 Amount paid upon debts and liabilities not included in other
 items

The several accounts shall be separately kept and not required to balance. The accounts for different classes of receipts shall be kept separately from the accounts of the different classes of expenditures; but every entry in each shall fully and clearly designate its source or purpose with the dates.

§ 131. Reports Subject to Approval of County Superintendent] All reports and records of district officers and proceedings of district meetings shall be subject to the approval of the county superintendent, and if any money belonging to any district shall be expended for supporting a school in which the English language shall not be taught exclusively, the county superintendent or any taxpayer of the district may in a civil action in the name of the district recover said money from the officers so expending it.

§ 132. Books and Reports Open to Inspection] All reports and all books, records, vouchers, contracts and papers of all kinds relating to the school houses, schools and school business in the district, in the office of the clerk or treasurer, shall be at all times open to the inspection of the chairman who shall advise and aid toward securing correct records and accounts, and legal reports, and they shall likewise be open to the inspection of the state and county superintendents, and any particular paper or record shall be exhibited at reasonable hours to the examination of any voter or taxpayer.

§ 133. Majority of Board Have Authority] Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it be otherwise expressed in the section or law giving the authority, and when a decision or direction is made by the majority of such officers or persons, it is the duty of the one to whom its execution belongs by law, to execute the same in all respects as if he had favored the particular decision or direction, as if it were authorized unanimously.

§ 134. Cultivation and Protection of Trees and Shrubs Upon the School House Grounds] It is hereby made the duty of the officers

of every school district in the state of South Dakota to plant trees and shrubs upon the grounds of each school house in their district and to encourage the school children to plant such trees and shrubs and to cultivate and protect the same.

Where stock is permitted to run at large, it is hereby made the duty of the school officers in every district in South Dakota to cause to be erected about the grounds of every school house in each district a substantial fence sufficient to protect the trees upon the school house grounds from destruction by live stock, and such fence shall be provided with convenient gates or stiles.

ARTICLE VI

Teachers and Schools

§ 135. [School Year, Month and Day Defined] The school year shall begin July first and end June thirtieth. A school month shall consist of twenty days, a school week of five days, a school day of five and one-half hours, exclusive of intermission.

Provided, that the time specified as a school day shall not apply to primary schools. Saturdays shall not be counted as school days.

§ 136. [Employment of Teachers] Teachers shall be employed only upon the exhibition of the teacher's certificate valid in the county where employed, and then only upon a written contract signed by the teacher and at least two members of the district school board, which shall specify the date at or about which the school shall begin, the length of time it shall continue, the wages per month and the time of payment thereof, and said contract shall be signed in duplicate, and one copy filed in the office of the clerk and the other retained by the teacher. The following conditions shall be understood as forming a part of every contract, whether expressed therein or not.

(1) The teacher shall not hold school upon any of the following legal holidays: The thirtieth day of May, the fourth day of July, the day appointed by the president of the United States for national thanksgiving, and the twenty-fifth day of December. But such days shall count as part of the term and the teacher shall be paid therefor, but such pay shall not be drawn for any Sunday.

(2) School shall be adjourned during the session of the County Normal Institute, when the teachers have been notified by the county superintendent.

(3) Teachers shall receive into their schools pupils transferred thereto by the order of the district board, or admitted by its authority.

(4) Teachers shall send the notices, keep proper entries in the register which shall show the grade in which each pupil belongs, the pupil's standing as shown by the examination, and such other information as will assist the succeeding teacher in the conduct and

management of the school, and make the report required by law; and the county superintendent shall promptly furnish without cost to the teacher the blank forms for such reports; and the district board shall furnish for use the proper register prepared so that the required facts and statistics can be kept in an orderly manner.

(5) Teachers shall classify the work of their schools in accordance with the suggestions, grades and outlines as prescribed in the course of study recommended by a majority of the county superintendents of the state and the superintendent of public instruction, and shall hold examinations, and make reports as prescribed therein.

(6) Any teacher who shall attend the full session of local district institutes in his district on any Saturday and who shall perform the duty or duties assigned, upon presenting to the clerk of the school board or the clerk of the board of education a certificate of attendance signed by the county superintendent and with his seal attached shall receive from the district treasury the same wages therefor as for one day's teaching, to be paid by the district where such teacher is employed; but no teacher shall receive such pay unless he has attended the full session of such district institute and performed the duty or duties assigned, and every teacher who is absent from a district institute held in the district to which he belongs shall forfeit one day's wages for each absence, unless such absence shall be occasioned by sickness or such other reason as shall be approved by the county superintendent.

Provided, that the county superintendent shall keep or cause to be kept a record of the attendance and absence of the teachers of each institute district separately and shall within five days after any district institute notify each clerk of a school board and each clerk of a board of education in such institute district of the attendance or absence of each teacher employed in such clerk's school district.

§ 137. Teachers to Give Notice on Beginning School] Every teacher on commencing a term of school shall give written notice to the county superintendent of the time and place, of beginning of such school, and the probable time when it will end.

§ 138. Branches to be Taught] Instruction shall be given in the common schools of the state in the following branches, in the several grades in which each may be required, viz: Reading, writing, orthography, arithmetic, geography, primary language and English grammar, history of the United States, history of South Dakota, physiology and hygiene, with special instruction as to the nature of alcoholic drinks and narcotics and their effects upon the human system, civil government and drawing.

§ 139. Board Shall Provide Register] The board of every school district shall provide one classification school register for each school therein, which shall conform to the form prescribed in the

book of forms provided in section 5, of article 1, and keep the same as part of the records of his office, except during each term of school, when the teacher shall keep said register and record therein each day the attendance of each pupil and the absence of those enrolled, and all other items necessary for making the report in the next section required.

§ 140. Teacher Shall Make Term Report] Every teacher of a common school under this law shall at the expiration of each term immediately make out full duplicate reports and deliver one copy thereof to the school clerk, and one to the county superintendent. Such report shall show the names, ages and sex of all pupils admitted during the term, the branches taught, the studies pursued by each pupil, the text books used, the number of days taught, the number of days each pupil was present, the average daily attendance, the date when school began and ended, the salary per month, and information concerning the school and property. In addition to the above his report shall show the grade in which each pupil belongs; his standings as shown by the monthly and term examinations, the daily program of class recitations, and such other information as may be required by the county superintendent. The teacher shall also make monthly reports to parents and to county superintendents when blanks for the same are furnished. And until such report shall have been filed with the clerk, the school board shall not pay more than ninety per cent of the wages of such teacher for his or her services as such, for the time required to be covered by such report.

Provided, that any teacher who wilfully neglects to give notices and make reports herein provided or who shall refuse to fulfill the conditions of his contract unless such neglect or refusal be on account of sickness shall thereby forfeit his certificate to teach.

§ 141. Disturbance of a Public School] Every person, whether pupil or not, who shall wilfully molest or disturb a public school when in session, or who shall wilfully interfere with or interrupt the proper order or management of a public school by acts of violence, boisterous conduct or threatening language, so as to prevent the teacher or any pupil from performing his duty shall be guilty of a misdemeanor, and shall upon conviction thereof, before a justice of the peace, be punished by a fine not exceeding twenty-five dollars or by imprisonment in the county jail not more than ten days, or by both such fine and imprisonment.

§ 142. Defacement of School Property] Any pupil, who cuts, defaces, or otherwise injures any school house, apparatus, or outbuildings thereof, is liable to suspension or expulsion; and on the complaint of the teacher to any member of the school board, the parents or guardians of such pupils shall be liable for all damages.

§ 143. Ethical Instruction] Moral instruction intended to im-

press upon the mind of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism and respect for honest labor, obedience to parents and due deference for old age, shall be given by every teacher in the public service of the state.

§ 144. Humane Treatment of Animals to be Taught] There shall be taught in the public schools of this state, in addition to other branches of study as now prescribed, a system of humane treatment to animals.

Each school supported wholly or in part by the public funds of this state, in any county or city thereof, shall instruct all scholars in the laws of this state as embodied in the penal code, or other laws pertaining to the humane treatment of animals, such studies on the subject as the board of education having supervision thereof may adopt, such instruction to consist of not less than one lesson of ten minutes each during each week of the school year. But no experiment upon live animals, to demonstrate facts in physiology, shall be permitted in any school in this state.

§ 145. Board Shall Provide Dictionary] In all schools not provided with a dictionary, the district school board shall provide for each school in the district one Webster's International Dictionary within thirty days after the request for the same has been made by the teacher; and they may also provide for each school other high grade library books and books of reference as they may deem for the best interest of the schools;

Provided, said expense shall not exceed ten dollars for any school in any one year. And it is especially provided, further, that no school district board shall buy any apparatus, chart, or similar device, unless said board is expressly authorized so to do by a majority of the school electors of such school district at a regular or regularly called special meeting thereof.

§ 146. Prohibition on Binding Contracts] No contract binding on the school district shall be made in any case except by the school board or board of education, acting as such, at a regular meeting or regularly called special meeting, excepting contracts made for the employment of teachers.

§ 147. Tuition for Eighth Grade Graduates] Any pupil who shall successfully complete the work of the eighth grade as established in the state course of study and who shall hold a common school diploma granted by the county superintendent is privileged to continue his school work up to and including the twelfth grade by attending any graded school in the state furnishing a higher course of study; and the tuition charge not to exceed \$2.00 per month therefor shall be paid by the board of his home district from the general fund thereof; provided his home district does not provide instruction in such higher grades.

ARTICLE VII

§ 148. Every person having under his control a child between the age of eight and fourteen years, both inclusive, shall annually cause such child to regularly attend some public or private day school for the entire term during which the public school in the district in which he resides is in session. Provided; that the district board may decrease the required term of attendance to not less than sixteen weeks, twelve weeks of which must be consecutive.

For every neglect of such duty the person offending shall be fined for the use of the public schools of his school corporation, a sum of not less than \$10.00 nor more than \$20.00 and shall stand committed until such fine and costs of suit are paid.

But if the person so neglecting shall show to the board of education or district school board, as the case may be, or to the court, that instruction has otherwise been given by a competent person for a like period of time to such child in the branches commonly taught in the public schools; that such child has already acquired the branches of learning taught in the public schools; or that his physical or mental condition as declared by a competent physician is such as to render such attendance unsafe or impracticable; or, if in the opinion of the court or judge such compulsory attendance would impose conditions which would not be humane, then such penalty shall not be incurred. Such fine shall be paid when collected to the county treasurer or the treasurer of such city or independent district in which such child and parents reside, to be credited by him as other money raised for school purposes to the district from which it came.

§ 149. The board of education of city or town independent school districts shall appoint each year a truant officer, whose duty it shall be, under the direction of said board or its superintendent, to enforce the provisions of this act. Provided, that the county superintendent shall act ex-officio as truant officer for all other districts. The truant officer shall receive such compensation for his services as the board of education may determine.

It shall be the duty of the truant officer, teacher, member or agent of such board of education to petition, and any reputable citizen may petition, the county court of the county, to inquire into the case of any child of compulsory school age who is not attending school, or whose attendance is irregular, or who has been guilty of habitual truancy, and the petition shall also state the names, if known, of the father or mother of such child or the survivor of them, and if neither father nor mother of such child is living or cannot be found in the county or if their names cannot be ascertained, then the name of the legal guardian, and if there be neither, then the person who, in the judgment of the court, is responsible for the conduct of such child. Such petition shall be verified by oath upon the belief of the petitioner, and up-

on being filed, the judge of the county court shall cause to be issued a citation to the sheriff of the county directing him to bring such parent, guardian or person before the court or judge and shall summon such witnesses as may be necessary to ascertain the facts in the case, and if the court or judge shall find that the material facts set forth in the petition are true, then such parent, guardian or person shall be fined as hereinbefore provided. It shall also be the duty of said truant officer to arrest children of school going age who habitually haunt public places and have no lawful occupation, and also truant children who absent themselves from school without leave, and place them in charge of the teacher having charge of the school which said children are by law entitled to attend.

The board of education shall have the power, in its discretion, to set aside a room or building for the detention, during reasonable hours, and instruction of such children as may be assigned thereto by the superintendent, principal or board of education because of habitual truancy, continued violation of the rules of the school, or of vicious or immoral habits, and to pass and enforce such rules and to provide teachers and other agents and equipment as may be necessary to maintain discipline and instruct in the same branches as are provided in other rooms or buildings. And it shall be the duty of said teacher to assign such children to their proper classes and instruct them in such studies as they are fitted to pursue. Any school officer or employee failing to perform the duty required of him by this article shall be liable to a fine of not less than \$10 nor more than \$20 for every such offense.

§ 150. No child under the age of fifteen years shall be employed, permitted or suffered to work at any gainful occupation in any mine, hotel, laundry, manufacturing establishment, factory, passenger or freight elevator bowling alley, or in any saloon, theatre, concert hall or place of amusement where intoxicating liquors are sold, or as messenger or driver thereof, or in any other manner in work performed for wages or other compensation, to whomsoever payable, during any portion of any month during the hours when the public schools of any district in which he or she resides are in session.

Every owner, superintendent or overseer of any mine, factory, work-shop, mercantile establishment, or any other person who shall employ any child under fifteen years of age contrary to the provisions of this article shall be deemed guilty of a misdemeanor, and for every offense shall upon conviction thereof be fined not less than \$10 nor more than \$50 and costs.

Any person having the control of a child or who may have children in his employ, who with the intent to evade the provisions of this article shall make a wilfully false statement concerning the age of such child or in regard to facts covered by any other provision of

this article, shall for such an offense be fined in any sum not less than \$10 nor more than \$50 for the use of the public school corporation.

(2) That all of article 7 of chapter 22 of the Revised Political Code of South Dakota of 1905, and all other acts or parts of acts in conflict with any of the provisions of this act be and the same are hereby repealed.

ARTICLE VIII

School Bonds

§ 151. Bonds May be Issued] Whenever the qualified electors of a school district shall at any regular or special meeting held for that purpose, vote to issue school district bonds for the purpose of building and furnishing a school house and purchasing grounds on which to locate the same, or to fund an outstanding indebtedness, the school district board may lawfully issue such bonds in accordance with the provisions of this article.

Provided, however, that the question of issuing bonds shall not be submitted to a vote of the district and no meeting shall be called for that purpose until the school district board shall have been petitioned in writing by one-third of the voters resident in said school district.

§ 152. Before the question of issuing bonds shall be submitted to a vote of the school district, notices shall be posted in at least three public and conspicuous places in said district stating the time and place of meeting, the amount of bonds proposed to be issued and the time in which they shall be made payable; said notices shall be posted not less than twenty days before the meeting, and the voting shall be done by means of written or printed ballots, and all ballots deposited in favor of issuing the bonds shall have thereon the words, "For issuing bonds," and those opposed thereto shall have thereon the words, "Against issuing bonds;" and if a majority of all the votes cast shall be in favor of issuing bonds, the school board through its proper officers shall forthwith proceed to issue bonds in accordance with the vote; but if a majority of all the votes cast are against issuing bonds, then no further action can be had, and the question shall not be again submitted to a vote for one year thereafter, except for a different amount.

§ 153. Denomination Bonds] The denomination of the bonds which may be issued under the provisions of this article shall be fifty dollars or some multiple of fifty, not exceeding two hundred dollars, and shall bear interest at the rate of not exceeding seven per cent per annum, payable semi-annually in accordance with interest coupons which shall be attached to said bonds; and no greater amount than one thousand dollars can be issued for any one school house, except

in towns or villages of more than three hundred inhabitants, and in such districts the amount shall not exceed four per cent of its assessed valuation and may be made payable in not less than three nor more than fifteen years, from date, in annual, biennial or triennial secession.

Provided, that when a district containing not less than three schools, at a meeting of the electors thereof shall have decided to consolidate part or all of said schools, not less than three, or if two or more districts, now organized, consolidate for the purpose of establishing and maintaining a graded central school, the district so consolidated and reorganized may issue bonds not to exceed four thousand dollars for the purpose of building, furnishing and equipping a school house for such consolidated district.

Provided that the amount shall not exceed four per cent of the assessed valuation of said district.

Provided, further, that for the purpose of this act the valuation fixed by the state board of equalization for the preceding year shall be the assessed valuation of such districts.

§ 154. Bonds—Form of—Auditor's Certificate] Whenever any bonds are issued under the provisions of this article, they shall be lithographed or printed on good bond paper and shall state upon their face the date of their issue, the amount of the bond, to whom and for what purpose issued, also the time and place of making, and the rate of interest to be paid. They shall have printed upon the margin the words, "Authorized by article 8 of chapter of the Session Laws of South Dakota for 1907" and upon the back of the bonds a certificate signed by the county auditor in substantially the following form:

"I certify that the within bond is issued in accordance with law, and is within the debt limits permitted by the constitution of the state of South Dakota, and in accordance with a vote of school district at a regular (or special) meeting on the day of A. D. 19 to issue bonds to the amount of dollars."

They shall be signed by the chairman and clerk of the school board and shall be registered and numbered in a book to be kept by the clerk for that purpose, in which shall be entered the number, date, and name of person to whom issued, and the dates when the same shall become due.

Bond Tax Levy] In any school district where there are bonds outstanding, the school board shall have power at the time the school taxes are levied to levy a tax in addition to the tax provided for in section 118 sufficient to pay the interest on said outstanding bonds as the same may become due and not to exceed fifteen per cent of the principal as a sinking fund. The said tax shall be certified to the

county auditor by the school clerk at the same time that the levies for other purposes are certified.

The money obtained from the levies for the interest and sinking fund shall not be used for any other purpose than that for which the levies are made;

Provided, that when any school district shall hereafter issue bonds, the school district board shall at or before the time of so doing provide for the levy of an annual tax sufficient to pay the interest and principal thereof when due, and all such levies when legally made shall be irrevocable until such debt be paid.

Provided, however, that such levy shall not be greater than fifteen per cent in any one year of the debt to be paid. The school board may in their discretion purchase any of its outstanding bonds at their market value and pay for the same out of the sinking fund.

§ 155. Sale of Bonds] Whenever any bonds shall be issued under the provisions of this article, the school district treasurer shall have authority to negotiate and sell such bonds for not less than par, and the proceeds shall be used exclusively for the purpose of building and furnishing a school house and in payment for a site for the same and for necessary buildings.

§ 156. Bonds a Lien on Property] Bonds issued under the provisions of this article shall be a lien upon the taxable property of the school district issuing them, and when any school board neglects or refuses to levy a tax in accordance with law to meet any outstanding bonds or interest thereon, the county auditor shall have power to levy such tax, and when collected to apply the proceeds to the payment of such coupons and bonds.

§ 157. Cancellation of Bonds] Whenever the bonds of any school district shall have been redeemed by the school board, they shall be cancelled by writing or printing in red ink the words "Cancelled and paid" across each bond and coupon, and the date of the payment and the amount paid shall be entered in the clerk's register against the proper number of bond and the bonds so cancelled shall be filed in the office of the district treasurer until all the outstanding bonds are paid, when they shall be destroyed in the presence of the full board.

§ 158. Building a School House] Whenever any school house is built with funds provided in the manner herein authorized, the school board shall advertise at least thirty days in some newspaper printed in the county, or by posting notices for the same length of time in at least three of the most public and conspicuous places, if no newspaper is published in the county, for sealed proposals for building and furnishing such school house in accordance with plans and specifications that shall be furnished by the school board, reserving the right to reject any and all bids, and if any of the proposals shall be reasonable and satisfactory said board shall award the contract to

the lowest responsible bidder, and shall require of such contractor a bond in double the amount of the contract, conditioned that he will properly account for all money and property of the school district that may come into his hands, and that he will perform the conditions of his contract in a faithful manner and in accordance with its provisions, and in case all the proposals shall be rejected said board shall advertise anew in the same manner as before and until a reasonable bid shall be submitted;

Provided, however, that no member of the school district board, clerk or treasurer, shall be interested, directly or indirectly in any contract for building or furnishing any school house provided for in this article.

§ 159. Bonds Executed Now in Excess of Statute] When any school district in this state, which shall have heretofore legally issued, executed and delivered its negotiable bonds for the purposes then provided by law, and which at the time of issue thereof was not in excess of the debt limit allowed said district or township by law, but which said district for any reason has outstanding in said bonds and other indebtedness an amount in excess of the present constitutional and statutory limit, so as to preclude a valid issue of bonds funding all outstanding indebtedness, then, and in that event the school board of said district upon being authorized to do so by a majority vote of all electors at any regular election or special election called for that purpose, is hereby empowered to make a contract for the issue of extension coupons with the holder or holders of said outstanding bonds, at or prior to the time of the same becoming due, which said contract shall be entered upon the clerk's record of said district, and in pursuance of said contract the said school board shall execute and deliver the extension coupons of said district, extending the time of payment of said school bonds heretofore issued for a period of not less than three nor more than ten years, at a rate of interest to be agreed upon between said school district board and the holder or holders of said bonds, not to exceed the rate in the original bonds, payable semi-annually at such date and place as may be stated in said coupons.

§ 160. Certificate of County Auditor] When any school district in this state shall have voted to issue its negotiable bonds for the purpose now provided by law, and before the county auditor shall certify to the bonds, as required in section 154 the said district shall file with said auditor certified copies of the record of the said school district, ordering said election, and the records and poll book of said election, and unless said records show a strict compliance with law, the said certificates shall not be executed.

ARTICLE IX

§ 161. Bonds by Boards of Education in Cities of the First

Class] The board of education in all cities of the first class are hereby authorized and empowered to issue negotiable bonds in the manner hereinafter provided for the following purposes: 1. To refund bonds that may now be outstanding. 2. To fund outstanding warrants. 3. To raise money for the purchase of sites and the erection of suitable buildings for school purposes. 4. To raise money for the erection of addition to school buildings.

§ 162. Resolution of Board] When the board of education of any city of the first class shall deem it necessary and expedient to raise money for any of the purposes herein provided for, it shall pass a resolution setting forth clearly and distinctly the object or objects, for which the bonds are to be issued, the amount of the bonds, the maximum rate of interest which they are to draw and the time when they shall become due and payable. Said resolution shall further fix the time and place for holding an election and shall distinctly specify the propositions to be submitted to the electors. Such resolution may include the issuing of bonds for one or more purposes. The resolution shall provide for its publication in two or more newspapers published in said city and that said publication shall be at least once a week for four weeks prior to the time of such election. When such resolution shall be adopted by the board, it shall be entered at length by the clerk on the minutes, signed by the president and attested by the clerk.

§ 163. Polling Place] The board shall fix a polling place in each ward and shall appoint by resolution the members of said board from the respective wards as judges of election. Such judges shall appoint a competent person as clerk.

§ 164. Election] Said election shall be held in accordance with the general election laws of this state, except as herein modified;

Provided, no registration of electors shall be necessary. The polls shall be opened at 2 p. m. and close at 6 p. m. on the day designated. All persons, male and female, who are qualified electors under the laws of the state shall be competent to vote at such election.

§ 165. Ballot—Form of] The ballot to be used shall be white paper and shall be printed by authority of the board, and have printed upon it the propositions submitted to said electors. Said proposition or propositions so printed on the ballot, shall be, as near as possible, in the following form:

1. Shall the board of education of the city of (giving the name of city) be authorized to issue bonds in the sum of (naming it) payable in twenty years or less from date, at a rate of interest not to exceed five per cent per annum, payable annually, for the purpose of refunding the outstanding bonded indebtedness of such school corporation?

2. Shall the board of education of the said city (naming it) be au-

thorized to issue bonds in the sum of (naming it) payable in twenty years or less from date, at the rate of interest not to exceed five per cent per annum, payable annually, for the purpose of funding the outstanding warrants of said school corporation?

3. Shall the board of education of said city (naming it) be authorized to issue bonds in the sum of (naming it), payable in twenty years or less from date, and bearing a rate of interest not to exceed five per cent, payable annually, for the purpose of purchasing suitable sites and for the erection of suitable school buildings?

4. Shall the board of education of the city of (naming it) be authorized to issue bonds in the sum of (naming amount), payable in twenty years or less from date, bearing a rate of interest not to exceed five per cent, payable annually, for the purpose of erecting additions to school houses?

On the ballots there shall be printed opposite each separate proposition the words "yes" and "no" with squares before them. Any elector desiring to vote for one or more of said propositions shall place a cross in the square opposite the word "yes." Any elector desiring to vote against one or more of said propositions shall place a cross in the square opposite the word "no."

§ 166. Board Canvass Votes] After the close of the polls the respective election boards shall canvass the votes cast and certify the result to the board of education. The board of education shall meet within one week after such election and proceed to canvass the votes cast in the various wards, and the result of the canvass must be entered in the minutes of the board. At such election the proposition submitted must receive a majority of the votes cast. If one or more of said propositions receive such a majority the clerk must enter in his records the affidavits of publication of notice of the election.

§ 167. Rate of Interest and Signature of Officers on Bond] The bonds when issued shall not bear a higher rate of interest than five per cent, payable annually. They shall specify on their faces the purpose for which they are issued and the time of the election authorizing their issue; the time and place of payment which shall not exceed twenty years, and the statement that they are issued in accordance with the provisions of this article. The bonds shall be signed as follows: The board of education of the city of (naming it) by (giving his name), president of the board, and attested by the clerk, with the seal, and countersigned by the treasurer of said board. Each bond so issued shall not be less than fifty dollars. Such bonds when issued shall be held to be negotiable securities and may be issued payable to order or bearer. The annual interest shall be evidenced by coupons attached to the bonds. The coupons shall be signed and attested in the same manner as the bonds, but need not be countersigned by the treasurer.

§ 168. Sale of Bonds] Such bonds shall be sold at public auction to the highest bidder for not less than par. The board of education shall cause at least two weeks' notice to be published, stating the time and place where such bonds will be offered for sale.

§ 169. Bond Issue—Limit of Tax Levy to Pay] Any board of education in the cities of the first class shall not issue bonds in such sums which, with the outstanding indebtedness, shall exceed 5% of the assessed valuation of the taxable property situated in said school district, except when they are for funding or refunding purposes; but such funding or refunding bonds, with the debts not funded, shall not exceed the five per cent limit. Before any bonds are issued and sold in accordance with this article and with the vote of the electors of said corporation, the said board of education shall pass a resolution providing for the levy of an annual tax, which said levy shall include a sufficient sum to pay the annual interest on all bonds issued under this article and to create a sinking fund of at least three per cent per year of the principal of such bonds. The interest and sinking fund thus provided for shall be set apart by the treasurer of said corporation and shall not be used for other purposes. The sinking fund shall be applied to the payment of the bonds as fast as enough accumulates to pay one or more bonds, or for the purchase of such bonds at or below par;

Provided, that such board may at its discretion pay not to exceed one year's interest in advance on any bond together with the principal, when it deems such course advisable, and in order to retire the bonds as fast as there is money in the sinking fund.

§ 170. Interest Coupons—Payment of] Whenever the interest coupons on any bonds become due, they shall be promptly paid by the treasurer on presentation, and he shall stamp them "Paid," with the date of payment, and his name. All bonds paid by him shall be cancelled in the same manner and filed with the clerk of the board.

§ 171. Property Pledged to Pay Bonds] The school property and fund of such school district are hereby pledged for the payment of any bonds issued under this article or under previous laws that may be superseded by this article.

§ 172. Bonds—Registered] It shall be the duty of the clerk and treasurer to register each bond issued in a suitable book, with the name of the purchaser and the names of subsequent holders when known. Such book shall contain columns for entering the payment of the coupons and bonds.

ARTICLE X

§ 173. Bonds for School Districts Created by Special Act] Any independent school district heretofore created and organized

under a special act is hereby authorized and empowered to issue bonds for the purpose of building, enlarging or furnishing school houses; or for purchasing grounds on which to locate the same, in any amount not exceeding five per centum of the assessed valuation of the property in the independent district, in such manner as is now provided for the issuance of bonds for like purposes under the provisions of the general school law;

Provided, however, that in no case shall the outstanding indebtedness, together with the bonds so issued, exceed five per centum of the assessed valuation of the property in said independent district.

ARTICLE XI

Cities, Towns and Adjacent Territory, Organized as Independent Districts

§ 174. All cities, towns and adjacent territory organized as independent school districts shall be governed by the provisions of this article;

Provided, that any city or town organized under special act, either for civil government or educational purposes, may at any time adopt the provisions of this article by a majority vote of the electors;

Provided, further, that any city or town having a population of one hundred inhabitants or over; within a radius of one mile from the center, may adopt the provisions of this article. In such cases the county superintendent shall, upon petition of a majority of the legal voters within the proposed district, call the first election therefor by posting notices in not less than three of the most public places in the district or districts in which said city or town is situated, said notices shall contain a full description of the boundaries of the proposed district, and also the time and place of holding the election. If a majority of the voters of the district or districts in which the said city or town is situated, shall vote for the incorporation of the said city or town as a corporation for school purposes, then it shall be considered as authorized and the county superintendent shall, without delay, publish notices for an election of officers of said corporation.

§ 175. Whenever a new corporation is authorized as is provided in section 174, the county superintendent, the president of the board of education of the district thus organized, and the chairman of the school district affected by the organization of the new district shall constitute a committee of arbitration for the purpose of adjusting all property interests between the new corporation and the district or districts affected by its formation. The title to all real property granted to the new corporation by the committee of arbitration shall be made over to the said corporation or corporations in which

it was previously vested upon order of said committee. And all personal property granted to the said new corporation shall be delivered to the proper officer by those having it in charge, upon demand, accompanied by the order of the committee. It shall be the duty of the county superintendent to file with the county auditor a correct plat showing the adjustment of district boundaries in consequence of the formation and organization of the district as above provided.

§ 176. Attachment of Territory] Territory outside of the limits of any organized independent school district, but adjacent thereto, may be attached thereto, and territory within the limits of any independent district, organized for school purposes and adjacent to any school district may be attached to said school district, whether said independent district has been organized by special act or otherwise, under the following conditions:

First. Application by written petition for such change must be made by a majority of the resident electors desiring to have territory attached to or detached from any independent district.

Second. Upon receipt of such petition the county superintendent shall call a committee to decide upon granting or refusing the petition, said committee consisting of himself, the president of the board of education of said independent district, and the chairman of the district board.

Third. The committee shall consider the interest of the two corporations concerned, the convenience of the petitioners and the permanent school interest, and if they deem it proper, shall grant the petition and issue an order authorizing the attaching of such territory to the independent district or school districts to which it is adjacent, and if to any adjacent district containing a city or town, such order shall specify to what ward or wards such territory shall belong for all school purposes;

Provided, that when territory has been attached prior hereto the board of education shall at any regular meeting determine to what ward or wards such territory shall belong for all school purposes.

Fourth. The committee shall also have power to adjust all property interests involved in the change which concerns the two corporations interested. Before the issuance of an order authorizing the change, they shall make an equitable adjustment of any question of indebtedness involved.

Fifth. A record of the decisions of the committee shall be transmitted to the clerks of the school board and board of education interested, for record, and a copy forwarded to the county auditor by the superintendent.

Sixth. Such territory shall, from the date of the order authorizing such change, be considered a part of the independent district of the said school district;

Provided, that such order shall not be issued until after the action and decisions of the committee are recorded by the board of education and the district school board.

The taxable property of all such adjacent territory shall be subject to taxation and bear its proportion of expenses incurred in the erection of school buildings and maintaining the schools of such corporation;

Provided, that territory more than two miles from the limits of such city or town shall not be considered adjacent territory to which the provisions of this section may apply unless the electors of such territory shall unanimously petition to be thus attached and considered as adjacent territory;

Provided, further, that when an independent school district containing an incorporated city or town is situated so near the center of a civil or congressional township as to leave a fraction of said civil or congressional township impracticable or inconvenient for school purposes, after attaching adjacent territory to said independent school district, to the two miles' limit as provided by law, then in that case the committee provided for in this act may, upon a petition of the majority of the electors of such civil or congressional township attach the surrounding territory and make the independent district to conform to the civil or congressional township line for school purposes only, and in such cases the committee may, by a majority vote thereof, upon the petition of two-thirds of the electors of such surrounding territory, and two-thirds of the electors of such independent district, issue its order attaching such surrounding territory to such independent district as aforesaid and all foregoing provisions shall apply to such actions of said committee except that said order shall go into effect at the expiration of thirty days from the date thereof, and it shall not be necessary that the actions and decisions of such committee be ratified by the district school board or board of education before the issuance or going into effect of such order.

Seventh. An appeal may be taken from any decision of the committee by any or all the petitioners or by any of the school districts interested, to the circuit court of the county in which the territory proposed to be annexed or detached is situated, upon notice in writing to the other interested parties, that is, to the committee and school boards and boards of education interested and the petitioners, as the case may be, by service upon any member of the committee upon any member of each of the school boards and boards of education interested, and upon any one of the petitioners and upon filing a bond in the office of the clerk of the circuit court in the sum of two hundred and fifty dollars, with at least two sureties to be approved by the clerk of the circuit court, conditioned that appellant will pay all costs therein that may be adjudged against him. Proof of the service of said notice of appeal, by affidavit, shall be filed with the clerk of

said circuit court; after the filing of the bond for costs and proof of service of the notice of appeal in the office of the clerk of the circuit court, the committee shall within five days transmit to the clerk of the circuit court the petition, and decision of the committee, and all original papers in the matter in controversy. Said committee may be compelled by said circuit court by an order entered upon motion to transmit such decision and petition and original papers, and may be fined for neglect or refusal to transmit the same. The clerk of the circuit court shall receive and file said papers and docket the same in the manner as on appeals from justice court, and shall receive the same fees therefor. The matter shall be tried anew in the circuit court, and the parties appealing to be designated and be the parties plaintiff, and the other parties interested the parties defendant. The action shall stand for trial at the term of the circuit court next convening after the filing of the bond and notice of appeal in the office of the clerk of the circuit court. No note of issue or notice of trial need be served. The same proceeding shall be had as in any civil action, and all judgments, orders, or decisions made therein shall be valid, mandatory, and enforceable as by law provided for judgments or orders in any civil action.

§ 177. School District a Body Corporate] Every district organized under the provisions of this article shall be a body corporate, and shall possess the usual powers of corporation for public school purposes, and may sue and be sued, and be capable of contracting and being contracted with, and of taxing and holding any land for a school site, not exceeding two acres chosen by the board of education at a regular meeting of said board, and in case the owner or owners of said land, or any part thereof, shall refuse or neglect to grant such site to the district, then said district shall have power to take such land for said site in the manner provided by law for the taking of private property for public use. And shall have power to hold and convey such personal or real property as it may at any time possess. All actions brought by or against such corporation shall be in the name of the board of education of said independent district of the county of of the state of South Dakota.

§ 178. Shall Maintain School not Less Than Six nor More than Ten Months] Each corporation organized under this article shall maintain a system of free common schools which shall be kept open not less than six nor more than ten months in any one year and shall be free to all children of legal school age residing within such corporation.

“§ 179. In all school districts organized under this article there shall be a board of education consisting of five members elected at large by the qualified electors thereof who shall be elected in the year 1908, two for a term of one year, two for a term of two years and one for a term of three years. Every year thereafter there shall be

electd each for a term of three years two members of such board except in years which are divisible by three when one member shall be elected and each shall serve till his successor is elected and qualified. Provided that no member of the city council or board of trustee shall be a member of the board of education."

§ 180. The school election shall be held on the third Tuesday of June. At this election there shall be elected members of the board of education as provided herein, and a treasurer of the board of education who shall be elected in the year 1908 and every three years thereafter for a term of three years, and he shall hold his office till his successor is elected and qualified."

"§ 181. The board of education shall act as judges and clerk of election therefor, and shall provide a polling place, separate booth for each 150 electors in said corporation. Provided, that in all cities of the first or second class, the board of education shall provide polling places in each ward thereof, and shall appoint a judge and a clerk for each. The returns from said election shall be certified by the officers of each polling place and shall be canvassed and declared by said board of education at their next regular meeting thereof."

§ 182. Vacancy Filled by Board] The board of education shall have power to fill any vacancy for the unexpired term which may occur in their body;

Provided that any vacancy occurring more than thirty days previous to the annual election shall be filled at the first annual election thereafter. Any vacancy in the office of treasurer shall be filled by the board of education by appointment. Said appointee shall not be a member of said board.

§ 183. The board of education at its first regular meeting in July of each year following their election shall organize by the election of a president and vice president, each of whom shall serve for a term of one year; and at their regular meeting in July each year they shall also elect a clerk, not a member of the board, who shall receive such compensation for his services as the board may allow; the members of the board of education shall receive no compensation.

Provided that in districts newly organized under this article, the board shall, within thirty days after their election, proceed to organize and elect officers as aforesaid, who shall serve until the time of the next regular annual meeting.

§ 184. Oath of Members and Other Officers] Each member of the board of education and officer provided for in this article shall take and subscribe an oath or affirmation to support the constitution of the United States, and the state of South Dakota, and faithfully to perform the duties of his office.

§ 185. Bond of Clerk and Treasurer] Before entering upon the discharge of his duties the clerk of the board of education shall give a bond in the sum to be fixed by the board, not less than five hundred

dollars, with good and sufficient sureties, to be approved by the board.

The treasurer shall execute a bond in such sum as that body may require with sufficient sureties to be approved by the board, conditioned for the faithful discharge of his duties as treasurer of such board.

The oath and bond of the clerk shall be filed with the treasurer. All other oaths and bonds shall be filed with the clerk, but the clerk shall immediately notify the county auditor and the county superintendent of the filing of such oath and bond.

§ 186. Meetings of Board] The regular meetings of the board of education shall be upon the last Friday of each month, but may in the discretion of the board be on the second Friday also and special meetings may be held from time to time as circumstances may demand.

§ 187. It shall be the duty of the president to appoint all committees and to countersign all warrants drawn upon the treasury for school moneys. It shall be the duty of the clerk to be present at all meetings of the board, keep an accurate journal of its proceedings, take charge of its books and documents, sign all warrants for school money, and perform such other duties as the board may require.

§ 188. Report of Clerk] The clerk of the board of education at the close of each school year shall make an annual report of the condition, financial as well as educational of all the schools of the corporation, a copy of which shall be sent to the county superintendent. Said report or such portion of it as the board of education shall consider advantageous to the public, shall be printed in a public newspaper or in pamphlet form.

§ 189. Report of Treasurer] The treasurer shall prepare and submit in writing a monthly report of the state of the finances of the corporation, and shall when required produce at any meeting of the board all books and papers pertaining to his office. He shall pay money only upon a warrant signed by the president, or in his absence the vice president, and countersigned by the clerk.

§ 190. Graded and High School May be Organized] The board of education shall have power to organize and maintain a system of graded schools, to establish a high school whenever, in their opinion, the interest of the school corporation demand the same, and to exercise sole control over the schools and school corporation.

§ 191. Tax Levy] The board of education shall on or before the fifteenth day of August of each year levy a tax for the support of the schools of the corporation for the fiscal year next ensuing not exceeding in any one year twenty-five mills on the dollar on all personal and real property within the district which is taxable according to the laws of the state, and which levy the clerk of the board of education shall certify to the county auditor, who is hereby authorized and required to place the same on the tax roll.

of the county and paid over by him to the treasurer of the board of education, of whom he shall take a receipt in duplicate, one of which he shall file in his office and the other he shall transmit to the clerk of the board of education. "And such receipt shall show the proportionate amounts belonging to the several funds of said board of education, apportioned by the treasurer thereof according to the relative amounts levied by such board for the current year."

§ 192. Taxable Property] The taxable property of the whole corporation, including the territory attached for school purposes, shall be subject to taxation.

§ 193. Error in Tax List Corrected] Whenever an error occurs in any school corporation or district tax list, the board of county commissioners may correct and refund such improper collection of school taxes the same as for other county taxes.

§ 194. Bonds] Whenever it shall become necessary in order to raise sufficient funds for the purpose of a school site or sites, to erect suitable building or buildings thereon, or to fund a bonded indebtedness or any outstanding indebtedness, it shall be lawful for the board of education of every corporation coming under the provisions of this article to borrow money for which they are hereby authorized and empowered to issue bonds bearing a rate of interest not exceeding seven per cent, per annum, payable annually, or semi-annually, at such places as may be mentioned upon the face of said bonds, which bonds shall be payable in not more than twenty years from their date, and the board of education is hereby authorized and empowered to sell such bonds at not less than par.

Provided, that no bonds shall be issued until the question shall be submitted to the people and a majority of the qualified electors who shall vote on the question at an election called for that purpose shall have declared by their votes in favor of issuing such bonds.

Provided, that the provisions of this section shall not apply to cities of the first class as the same are provided for by article 9 of this chapter.

§ 195. Election Called by Mayor] It shall be the duty of the mayor of such city or town, upon request of the board of education to call an election to be conducted in all respects as are the elections for city or town officers, in the same corporations (except that returns shall be made to the board of education) for the purpose of taking the sense of such corporation upon the question of issuing such bonds, naming in the proclamation of such election the amount of bonds asked for and the purpose for which they are to be used;

Provided, that where the incorporation is not organized for civil government, the board of education may call and conduct the election provided for in this section.

§ 196. Bonds Signed by President and Attested by Clerk] The bonds, the issuing of which is provided for in the foregoing section

shall be signed by the president, attested by the clerk, and countersigned by the treasurer of the board of education, and said bonds shall specify the rate of interest, and the time when the principal and interest shall be paid, and each bond so issued shall be for a sum not less than fifty dollars, but no corporation shall issue bonds in pursuance of this act in any sum (including other indebtedness) exceeding five per cent of its assessed valuation.

§ 197. Tax Levy to Pay Bonds and Interest] The board of education at the time of its annual levy of taxes for the support of schools as herein provided shall also levy a sufficient amount to pay the interest as the same accrues on all bonds issued under the provisions of this article, and also to create a sinking fund for the redemption of said bonds, which it shall levy and collect in addition to the rate per cent authorized by the provisions aforesaid for school purposes and said amount of funds when paid into the treasury shall be and remain a specific fund for said purpose only and shall not be appropriated in any other way except as hereinafter provided.

§ 198. Bonds Issued Hereafter] Any school district which shall hereafter issue bonds shall at or before the time of so doing provide for the levy of an annual tax sufficient to pay the interest and principal when due, and such levy shall be irrevocable until such debt is paid;

Provided, that such levy shall not exceed fifteen per cent in any one year of the debt to be paid. All money raised for the purpose of creating a sinking fund for the final redemption of all bonds issued under the provisions of this article shall be invested annually by the board of education in bonds of the state of South Dakota or of the United States, or the board may buy and cancel the bonds of the district whenever such may be purchased at or below par, or to purchase its outstanding registered warrants that will be paid prior to the time such bonds will become due.

Wilson vs Board of Education, 12 S. D. 535.

§ 199. Interest Coupons] Whenever the interest coupons of the bonds hereinbefore authorized shall become due, they shall be promptly paid by the treasurer, upon presentation, out of money in his hands collected for that purpose, and he shall endorse upon the face of such coupons in red ink the word "Paid" and the date of payment, and sign the initials of his name.

§ 200. School Property Pledged for Indebtedness] The school fund and property of such civil corporation and territory attached for school purposes is hereby pledged for the payment of the principal and interest of the bonds mentioned in this article as the same may become due.

§ 201. Bonds and Warrants Registered] It shall be the duty of the clerk of the board of education to register in a book provided for that purpose the bonds issued under the provisions of this article, and

all warrants issued by the board, which registration shall show the number, date and amount of said bonds and warrants and to whom made payable.

§ 202. Expenditures of Funds Regulated] No expenditure involving an amount greater than one hundred dollars shall be made except in accordance with the provisions of a written contract, and no contract involving the expenditure of more than five hundred dollars for the purpose of erecting any public building or making any improvements shall be made except upon sealed proposals and to the lowest responsible bidder.

§ 203. No Sectarian Doctrine] No sectarian doctrine may be taught or inculcated in any of the schools of the corporation, but the Bible, without sectarian comment, may be read therein.

§ 204. Examining Committee in Cities] The board of education in cities of the first and second class at such times as they shall deem expedient, shall elect a superintendent of schools, in no case a member of their own body, whose duty it shall be to have a general supervision of the schools of the corporation, subject to the rules and regulations of the board, who shall hold his office during the pleasure of the board and shall receive such compensation as the board may allow.

The board shall also appoint two competent persons who, with the superintendent as chairman, shall be styled the examining committee of the board of education.

Provided: That the examining committees in cities of the first class shall have the power to examine teachers for their own schools and to issue certificates authorizing persons to teach therein in accordance with rules fixing the conditions for issuance of such certificates as may be adopted by the board of education; and such certificates shall be the sole license required by law to teach in such cities. Provided that the examination papers and certified copies of credentials upon which such certificates were issued shall be kept on file in the office of the clerk of the board of education.

The principal or superintendent of schools of all independent districts employing such officer, and in such independent districts as do not employ such an officer, the county superintendent alone, shall examine all teachers employed to teach in the schools of any city, town or other independent district, the same as other teachers of the county are examined except as hereinafter provided, and no city superintendent or principal shall be employed who does not hold a first grade or state certificate or a state diploma. In no case shall any teacher be employed to teach in such schools who does not hold a certificate as above provided, or a state certificate, or a state diploma; and any contract made contrary to the above is hereby declared void.

The above provisions shall be construed as giving the examining

committee of the board of education in cities of the first class, and the superintendent or principal of schools of any city or town, or other independent district, advisory power in the examination of teachers for their respective schools, and they may add such questions as they may deem wise in the examination in order to test the qualifications of teachers for any particular grade or special work.

In cities, towns or other independent districts other than cities of the first class the superintendent of schools may endorse his approval upon a teacher's county certificate or he may issue a special statement or certificate in regard thereto. In cities of the first class such endorsement on a teacher's county certificate or such special statement or certificate shall be signed by all or a majority of the examining committee of the board of education and the said statement or certificate with the teacher's county certificate shall be exhibited to the board of education at the time of contracting for a school.

Provided, no teacher who holds a state or county certificate under this article is excused from the county institute except for good and valid reasons.

Provided, further, that the city superintendent shall revoke the certificates, issued by the examining committee of which he is chairman, of those persons who do not attend the county institute, except as hereinbefore provided.

§ 205. Special Acts not Repealed] Nothing in this article contained shall be construed as repealing any special act or acts or any portion thereof, creating or relating to any schools in cities or towns or independent school districts.

ARTICLE XII.

School Libraries.

§ 206. Library Fund Created] The county treasurer shall withhold from the apportionment received from the interest and income fund or other income for the schools of his county annually an amount equal to ten cents per capita for each person of school age, which money shall constitute a library fund and shall be used in the purchase of library books as hereinafter provided.

§ 207. County Library Board] The county superintendent, county auditor, state's attorney, and all superintendents of city schools; and principals of schools in villages employing more than one teacher, shall constitute the county library board. Annually, between the first day of July and the first day of September the county library board shall meet at the call of the county superintendent who shall be chairman of said board, and expend the money, provided for in the preceding section,

in the purchase of books selected from the list prepared by the state superintendent.

208. Librarian] The clerk of the school district shall act as librarian, and shall receive and have the care and custody of the books, and shall loan them to the teachers, pupils and other residents of the district in accordance with the regulations prescribed by the state superintendent. The clerk shall give a receipt for and keep a record of the books received from the county library board, and shall include in his annual report such library statistics as the state superintendent may require. During the time the school is in session the library shall be placed in the school house, and the teacher shall act as librarian under the supervision of the district clerk.

§ 209. Book Cases Shall be Provided] The school board shall provide suitable cases for the books in each school.

§ 210. Library Circuits] The county library board shall have power to designate library circuits, each composed of not more than ten schools. When one or more such library circuits shall have been organized, it shall be the duty of the county superintendent to employ a responsible person to move all the libraries herein provided for. These removals shall be made in January and July of each year, and in such order as the county superintendent shall direct, and the person making such removal shall receive therefor ten cents per mile for the distance necessarily traveled in making such exchange. Such mileage shall be paid by the county treasurer upon warrant issued by the county auditor, and shall be charged by the county treasurer pro rata to the various school districts affected. Provided, no warrant for such mileage shall issue, except on presentation of a voucher signed by the county superintendent. "Provided, that the boards of education in cities of the first and second classes, may select such books as they may deem wise and shall forward a list of such books to the chairman of the library board."

§ 211. Compensation of Members of Library Board] The members of the county library board shall receive no compensation. The expense of postage, express and freight necessarily incurred by the county board in securing the books shall be a charge upon the library fund provided for in section 206.,

§ 212. Warrants Upon Library Fund] The county treasurer shall pay out money in the library fund upon vouchers signed by the county superintendent and the county auditor.

ARTICLE XIII.

Township High Schools.

§ 213. Election] Upon the petition of not less than fifty freeholders of any civil township filed with the township clerk at least fifteen

days preceding the regular election of township supervisors, it shall be the duty of the said clerk to notify the voters of said township that an election for or against a township high school will be held at the said next regular election of township supervisors by posting notices of such election in three public places throughout such township for at least ten days before the election, which notices may be in the following form, viz:

High School Election.

Notice is hereby given that on Tuesday, the day of March, A. D. an election will be held at for the purpose of voting for or against the proposition to establish a township high school, for the benefit of the township No. range No. The polls for said election will be open at and close at o'clock on said day.

.....
Township Clerk.

§ 214. Ballots] The ballots for such election shall be received and canvassed as in other township elections.

§ 215. Township Board of Education] If a majority of the voters at such election shall be found to be in favor of establishing a township high school, it shall be the duty of the supervisors of the township to call a special election on any Tuesday within sixty days of the time of the election establishing the township high school for the purpose of electing a township board of education, to consist of three members, to wit: one director, one clerk, one treasurer; notice of which election shall be given for the same time and in the same manner as provided for in the election of township supervisors. The members elected shall determine by lot at their first meeting the length of term each is to serve. One of the members shall serve for one year, one for two years, and one for three years, from the second Tuesday of July next succeeding their election. Successors shall be elected at the same time and place as the regular township elections are held. Whenever a vacancy occurs the county superintendent shall appoint a successor who shall serve until a successor is elected and qualified. Within thirty days after the election, the members elect of the township board of education, shall qualify by making oath that they will support the constitution of the United States, the constitution of the state of South Dakota, and faithfully discharge the duties of their trust. Each member shall further qualify by giving a bond to the high school township; the director in the penal sum of one hundred dollars, the clerk in the penal sum of two hundred dollars, and the treasurer in such sum as may be fixed by the clerk and director, but not less than double the sum of the moneys as nearly as can be ascertained to come into his hands in any one year. The bonds of the clerk and director shall be signed by at least one surety,

and that of the treasurer shall have at least two sureties. The bonds of each officer shall be approved by the other two members of the board. Said bonds shall be conditioned that he will faithfully perform his duties as a member of the township board of education, and account for any moneys or property of such high school township that may come into his hands or care. Said oath shall be in writing and may be taken before any one qualified to administer oaths under the law of the state, and said oaths and bonds of the members of the first board shall be approved by the township clerk. All bonds of the board of education shall be filed with the auditor of the county wherein such high school township is organized. Failure to qualify within thirty days shall ipso facto create a vacancy.

§ 216. Duties of Township Boards of Education] It shall be the duty of the township board of education to establish at some central point most convenient to a majority of the pupils of the township a high school for the education of the more advanced pupils. They shall have charge, directions and management of the high school of the township, and the care, custody and control of all the property belonging to it. They shall assist and co-operate with the teacher or teachers in the government and discipline of the school and may make proper rules and regulations therefor. They may suspend or expel from school any person insubordinate or habitually disobedient; provided that such suspension shall not be for a shorter period than ten days, nor beyond the end of the current term of school.

§ 217. Union of Two or More Townships] In like manner the voters and supervisors of two or more adjoining townships may co-operate in the establishment and maintenance of a high school on such terms as they may, by written agreement made and signed by the boards of supervisors, enter into.

§ 218. Discontinuance of a Township High School] When any township or townships shall have organized a high school and wish to discontinue the same, upon petition of not less than a majority of the legal voters of said township or townships, filed with the township clerk or clerks of said township or townships, at least fifteen days preceding the regular election of supervisors, it shall be the duty of said clerks to notify the voters of the township that an election will be held on the day of said regular election of supervisors for the purpose of voting for or against discontinuing the township high school, which notice shall be given in the same manner and for the same length of time, and may be in substantially the same form as the notice provided for in section 213 of this act.

§ 219. The ballots for such election shall be received and canvassed in the same manner as provided for in section 214 of this act. If a majority of the votes cast at such election shall be in favor of discontinuing the high school, it shall be the duty of the board of educa-

tion to discontinue the same, and turn all the assets of said high school into money and deposit the same in the county treasury to the credit of the school funds of the various districts or parts of districts embraced within such high school township or townships, in proportion to the assessed valuation of such districts or parts of districts to be used for general school purposes.

§ 220. Meetings of Board of Education] The regular meetings of the board of education for the transaction of business shall be on the second Tuesday of July, the last Tuesday of November and March, at such hour and place as may be fixed by the board of education; provided that the clerk of the board shall, when requested by a majority of the board call a special meeting at any time, by giving written notice to each member of the board at least three days prior to the meeting.

§ 221. Tax Levy] The board of education shall have power to levy upon the property of the township a tax for high school purposes of not exceeding ten mills on the dollar in any one year, which levy shall be made by resolution of that board at their regular July meeting. The clerk shall immediately thereafter notify in writing the county auditor of the tax so levied. The board of education shall have power and may direct the removal of the school house to a more convenient location upon the petition of two-thirds of the electors of the entire school township.

§ 222. Corporate Name and Powers] Every civil township organized for the purpose of establishing a township high school under this act, shall be and is hereby constituted a corporation for high school purposes under the name of the civil township, the territory of which it comprises, e. g. High School Township, and may under its name sue and be sued, contract and be contracted with, purchase, hold and use personal and real property for the purpose mentioned in this act.

§ 223. School Board as Board of Education] Where the school township system now exists the school township board shall assume the duties of the board of education herein provided for.

§ 224. Salary of Board] Members of the board of education, provided for in section 215 of this act, shall receive a salary of \$1.50 per diem for each day actually spent in the interest of the school district; provided, such salary shall not exceed twenty-five dollars per member in any one year.

ARTICLE XIV.

Uniformity of School Text Books

§ 225. County Board of Education] The county superintendent of schools, the president of the board of education of all cities or

towns, the county auditor, the county state's attorney, the board of county commissioners, their successors in office and one person from each commissioner's district who shall be selected by the members of the school board of such commissioner's district present at a meeting to be called by the county superintendent, shall constitute the county board of education of each county in this state for the purpose of selecting and adopting all the text books needed for use in public schools in the county. The county superintendent of schools shall in all cases be chairman of the county board of education, and the county auditor, secretary; and a majority of said board shall constitute a quorum for the transaction of business.

§ 226. Meeting of County Board of Education] The county board of education shall meet at the office of the county superintendent of schools of each county of the state on the second Tuesday of June, 1907, and every five years thereafter and select and adopt a complete series of school text books to be used in all the schools of the county; provided, that nothing in this article shall be construed to prevent any county board of education from selecting a series of text books from two or more publishers; provided, further, that the board of education in cities and towns may adopt other or additional books by the same or other authors. The county board of education shall advertise for twenty days in a newspaper published in each county that at a time and place named in said notice said board will receive sealed bids for furnishing school books to the pupils of all public schools in the county as provided in this article for a term of five years. Other necessary books shall be purchased and contracted for at the same time.

§ 227. Duties in Selecting Text Books] Before selecting and adopting school text books in accordance with the provisions of this article, it shall be the duty of said board of education to take into consideration the books used in the county, and all books submitted by publishers, and most carefully consider the price, the type, the material, the binding and other items that go to make up a desirable text book, and no text book shall be adopted whose price is above the contract or wholesale price at which said books were furnished to any other state, county or school corporation in the United States during the year previous to such adoption. The county superintendent shall annually at the close of the year make a report to the county board of education as to the operation of the school book contract.

§ 228. Notice of Meeting] The county superintendent shall notify each member of the county board of education in writing of the time and place of meeting at least ten days before the date of said meeting, and he shall prepare and furnish such information as shall assist the board in acting for the best interests of the people.

§ 229. Contract for Books and Designations of Depositories] The board of county commissioners shall contract with the publish-

ers of such books as have been adopted by the county board of education designating the price at which such books shall be furnished to them or to their authorized agents, and they shall designate a depository for each school corporation in the county where school books shall be sold to pupils at not more than ten per cent above cost, and they shall pay for the books and transportation of the same, so contracted for, out of the general fund, on warrants signed by the county auditor and countersigned by the chairman of the board of county commissioners;

Provided, that the same depository may be designated for one or more school corporations.

§ 230. Provisions Contained in Contract] The following shall constitute a part of every contract with publishers as provided in this article, whether contained in such contract or not; whenever the state of South Dakota shall have published a sufficient number of text books used in the public schools of the state, to supply the schools, of any county in the state, upon notice given by the governor to the county auditor of any county this contract shall be void as far as it relates to such book, and the county auditor shall immediately notify the publishers holding such contract. The county commissioners of such county shall forthwith supply all the schools of said county with the books printed by the state. The auditor of said county shall on or before the 11th day of each calendar month send moneys for all state's books sold, to the state treasurer, together with such reports as the governor of the state may direct.

§ 231. Bond of Depository] The board of county commissioners may require a good and sufficient bond from each depository designated by them as their agent, and such agent shall be required to file a statement with the county auditor on or before the first day of January, April, July, and October, showing the number and kinds of books sold by him, and the number and kinds of books on hand in such depository on the last day of the preceding month, and all moneys due the county by such depository shall be paid into the county treasury at the time of filing such statement. The county auditor shall supply each depository with proper blanks for making such report.

§ 232. List of Books for Each School] The county board of education shall furnish a printed list of books adopted designating the retail price of each, and supply one or more copies to each school corporation and to each depository designated. The secretary or clerk of each school corporation shall post said price list in each room under his supervision.

§ 233. Free Text Books] Upon a written petition of a majority of the electors of any school corporation asking that the school books be furnished free to the pupils, it shall be the duty of said board to

arrange and furnish the free use of books to the pupils of such corporation under such rules and regulations as the school board may determine.

§ 234. Book Case] Said school board must procure a safe book case in which said books shall be kept whenever it shall have decided to supply its school books direct to the pupils, and a careful invoice must be reported at the close of each term by the secretary. The books shall remain the property of the school corporation and can only be used on order of the board.

§ 235. Books Adopted for Five Years] Books once adopted or contracted for under the provisions of this article, shall not be changed for a period of five years, except as heretofore provided, and on the request of at least two-thirds of the school boards of the county.

§ 236. Prohibition on Teachers] No school teacher, county or city superintendent, or member of any county board of education within the state of South Dakota shall be allowed to receive any emolument, cash or otherwise, from any publisher or publishers, of school books, in payment for a vote or a promise to vote for or use their influence for any book or books to be used in the schools under their charge. Neither shall any agent or other person be allowed to give or offer any emolument as hertofore described nor promise of work nor other inducement to any teacher, county or city superintendent, or member of any county board of education, or other board of education for any vote or promise to vote, or to use their influence for any book or books to be used in the school under their charge;

Provided, that nothing in this section shall be construed to prevent any school official from receiving a reasonable number of sample copies for investigation, with a view to obtain information as to the book or series of books for which such official shall cast his vote;

Provided, further that nothing in this section shall be construed to prevent any teacher from obtaining employment from any publishing house, in schools not under their direct charge. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor.

Provided, that there shall be exempted from the provisions of this article all school corporations of cities owning and using a system of text books.

ARTICLE XV.

§ 237. Plans for School Buildings Approved by State Superintendent] In order that due care may be exercised in the heating, lighting and ventilation of public school buildings hereafter erected, no school house shall be erected by any board of education or school district board in this state until the plans and specifications for the same showing in detail the proper heating, lighting, and ventilation of

such building shall have been approved by the superintendent of public instruction.

School houses shall have in each class-room at least fifteen square feet of floor space, and not less than two hundred cubic feet of air space per pupil, and shall provide for an approved system of heating and ventilation by means of which each class room shall be supplied with fresh air at the rate of not less than thirty cubic feet per minute for each pupil, and have a system of heating capable of maintaining an average temperature of seventy degrees Fahrenheit during the coldest weather.

ARTICLE XVI

§ 238. Study of Physiology and Hygiene in the Public Schools] In addition to the branches in which instruction is now required by law to be given in all schools supported wholly or in part by public money, instruction shall also be given as to the nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of relative physiology and hygiene. And such subjects shall be taught as thoroughly as arithmetic and geography are taught in said schools. Such instruction shall be given orally to pupils who are not able to read, and shall be given by the use of text books in the case of pupils who are able to read. And such instruction shall be given as aforesaid to all pupils in all public schools in the state.

§ 239. The text books used for the instruction required to be given by the preceding section shall give about one-fourth of their space to the consideration of the nature and effects of alcoholic drinks and narcotics; and the books used in the highest grade of graded schools shall contain at least twenty pages of matters relating to this subject, but no book in which the required amount of this subject shall appear in whole or in part as a separate chapter at the end of the book shall be considered as complying with the requirements of this statute. Text books on physiology in use in the schools at the time this act takes effect, which are not in accordance with the requirements of this section, shall be changed for books satisfying the requirements of this section except when previous contracts as to such text books are now in force.

§ 240. No certificate shall be granted to any person to teach in the public schools of the state or in any of the educational institutions receiving money from the state, after the first Monday of July, A. D., nineteen hundred six (1906), who has not passed a satisfactory examination in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system.

§ 241. And be it enacted, that it shall be the duty of county and city superintendents and boards of all educational institutions receiv-

ing aid from the state to report to the state superintendent of public instruction any failure or neglect on the part of the boards of school trustees, boards of education and boards of all educational institutions receiving aid from the state to make proper provision, in any and all the schools under their jurisdiction, for instruction in the nature of alcoholic drinks and narcotics and their effect upon the human system, in connection with the several divisions of the subject of relative physiology and hygiene, as required by this act; and such failure on the part of trustees, boards of education and boards of educational institutions receiving money from the state, thus reported or otherwise satisfactorily proved, shall be deemed sufficient cause for which the warrant shall be withheld for the state appropriation of school money to which such district or educational institution would otherwise be entitled.

ARTICLE XVII

School Corporations

§ 242. Relating to Independent School Districts] All independent school districts organized as independent school districts by special act or charter, that at the time of organization included within their boundaries an incorporated city, town or village organized by special act or charter, that has subsequently organized and is now a city under the general law for the government of cities, and such independent school district has continued to act under the special act or charter organizing said independent school district, shall reorganize and be governed by the general law for the government of schools in cities and towns and adjacent territory organized as independent school districts.

§ 243. The boundaries of such independent school districts shall remain the same as under the special act or charter unless changed in accordance with the provisions of law for changing the boundaries of such independent school districts. Provided, this act shall not apply to any independent school district, any part of which is in more than one county.

§ 244. That whenever the city within the boundaries of any such school district is divided into wards, it shall be the duty of the council of said city, on or before the first Monday in April, 1905, to attach to said wards the adjacent territory within said independent school district, and not within the limits of said city, and at the ensuing city election there shall be elected a board of education, as provided for by article eleven of this act. The board of education so elected shall meet and organize on the first Monday succeeding their election and shall at said meeting determine by lot which of said members shall hold for two years and which for one year. That after said organization said independent school district shall be deemed to be

organized under the general law, and the special act or charter organizing said independent school district shall thereafter and thereby be annulled.

Provided, that until such annulment, the acts of the officers of said independent school district are hereby validated and legalized and the reorganization of all cities, towns and villages herein referred to is hereby validated and legalized.

§ 245. It being one of the purposes of this act to rearrange, collect and codify the laws of the state, relating to the public schools, therefore, chapter 22 of the Revised Political Code of 1903, of South Dakota, and chapters 75, 126, 127, 128, 129, 130, 131, 132 and 133 of the Session Laws of 1903; and chapters 68, 99, 100, 102, 103, 158 and 162, of the Session Laws of 1905, and all other acts and parts of acts in conflict with this act, are hereby repealed.

Approved March 13, 1907.

CHAPTER 136

(H. B. 136)

PROVIDING FOR COMPULSORY EDUCATION FOR INDIAN CHILDREN

AN ACT Entitled an Act Compelling the Attendance of Indian Children at Schools When Tuition, Lodging and Board are Furnished at the Expense of the United States.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Must Compell Attendance of Indian Child] That whenever the government of the United States erects or causes to be erected and maintained, a school for general educational purposes within the state of South Dakota, and the expense of the tuition, lodging, food and clothing of Indian pupils therein is borne by the United States, it shall be compulsory on the part of every parent, guardian, or other person in the state of South Dakota, having control of an Indian child or children between the ages of six and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months, or during the annual term, unless such child or children is or are excused from such attendance by the county superintendent of schools of said county in which said child or children reside and a certificate be procured from the county superintendent of schools showing that the bodily or mental condition of such child or children has been and is such as to prevent his or her or their attendance at school or application at study for the period required, or that such child or children is or are taught in the public school, private school or other school in such branches as are usually taught in the

public schools; provided, that in case the government of the United States does not make provision for the free transportation of such child or children to and from their homes to said school, then he, she or they shall not be liable to the provision of this act, unless they reside less than ten miles from such school.

§ 2. Duty of Principal or Superintendent] It shall be the duty of all principals or superintendents of the school or schools mentioned in this act, before attempting to enforce the provisions of the act, hereinafter, mentioned, to serve, or cause to be served, a demand for the attendance of certain children naming them and also designating the school at which their attendance is required, upon the parent, guardian or other person having charge of said child or children as may be eligible to attend said school over which he has charge and a copy of this act on such parent, guardian, or other person having charge of said child or children and such person shall within ten days deliver said child or children at said school or to the principal or superintendent thereof, or furnish satisfactory proof that the bodily or mental condition of said child or children will not admit of attendance.

§ 3. Failure to Comply with Demand—Duty of Superintendent] If at the expiration of ten days after such notice or demand, the parent, guardian or other person having charge of said child or children shall have failed or refused to comply with this act, the principal or superintendent shall commence proceedings in the name of the state for the recovery of the fine hereinafter provided before any court having jurisdiction.

§ 4. Penalty] Any parent, guardian or other person having control or charge of any Indian child or children, failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and shall be liable to a fine of not less than ten dollars (\$10) nor more than twenty-five dollars (\$25), and imprisonment in the county jail for fifteen days for the first offense and not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) and imprisonment in the county jail for thirty days for the second offense and each subsequent offense, besides the cost of the action. It is provided further, that in emergency cases proceedings may be begun at the expiration of three days after each refusal of the parent, guardian or other person having charge or control of said child or children to comply with the demand of said principal or superintendent.

§ 5. Fines—Where Paid] All fines collected under the provisions of this act shall be paid into the county treasury, the same to be placed to the credit of the general school fund.

§ 6. Duty of Sheriffs and Officers] It shall be the duty of all sheriffs, constables, policemen, town and city marshals in the state to take cognizance of this act and assist principals and superintendents of schools in carrying out its provisions.

§ 7. Violation—Penalty] Any person or persons who shall di-

rectly or indirectly persuade, advise or intimidate in any manner, the parent, guardian or other person having control or charge of any Indian child or children from complying with the demand of a principal or superintendent of a school who is endeavoring to carry out the provisions of this act shall be guilty of the same offense and shall be subject to the same penalty as the parent or guardian; provided, that this section shall not apply to the attorney or legal adviser of any parent or guardian in giving advice in his legal capacity.

§ 8. Justices of Peace to Have Jurisdiction] Any justice of the peace within the county where the child or children live shall have jurisdiction to try and determine action brought under this act.

§ 9. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 8, 1907.

CHAPTER 137

(S. B. 132)

PROVIDING FOR COMPULSORY EDUCATION FOR THE DEAF AND BLIND
AN ACT Entitled an Act for the Compulsory Education of the Deaf and Blind.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of County Judge] Whenever complaint is made before any county judge of the state of South Dakota, that any blind or deaf child of proper age is being deprived of a proper education, by the refusal or neglect of its parents, guardian or custodian, and it shall appear that such blind or deaf child is resident of the county wherein complaint is made, it shall be the duty of such county judge to summon such parents, guardian or custodian before him; and if any material facts are disputed, it shall be the duty of such judge to summon and examine witnesses as to the facts, and if proofs be sufficient to establish the facts set forth in the complaint, or the facts be admitted, said county judge in his discretion shall after considering the needs of the parents of such child and the effect that the removal of said child would have upon the parents in any way, order such child sent to some public, or private institution for the education of the deaf or blind as the case may be, but in no case so as to cause any expense to be made against such county except as hereinafter provided.

§ 2. Expense—By Whom Paid] If in the judgment of such county judge the parents, guardian or custodian, are properly chargeable with the expense of transporting such child to such institution and are financially able to do so then the said county judge

shall order and adjudge, that the said parents, guardian or custodian shall defray such expense, but if otherwise the expense of such transportation shall be paid from the county poor fund of such county.

§ 3. Refusal to Obey] Any parent, guardian or custodian of any such deaf or blind child who shall refuse or neglect to obey any order of any such county judge duly made as provided in this act shall be deemed guilty of a contempt of court and subject to the penalties thereof.

§ 4. Duty of Superintendents of Schools] It shall be the duty of every county, or city superintendent of schools, to send to the superintendent of the school for the blind at Gary, South Dakota, the names of all blind children of proper school age residing in his county or city; and to send to the superintendent of the school for the deaf at Sioux Falls, South Dakota, the names of all deaf children of proper age, residing in his county or city, whenever the residence of such defective children within their jurisdiction becomes known to them, and the said superintendents for the respective institutions for the blind and deaf shall take all necessary action to provide that such defective children shall be given the advantages of proper education.

§ 5. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 4, 1907.

CHAPTER 138

(H. B. 105)

RELATING TO THE CONSTRUCTION AND REPAIR OF PUBLIC OR SCHOOL BUILDINGS

AN ACT Entitled an Act for the Protection of the State, County, Municipal Corporations and School Districts and of Persons Furnishing Materials and Labor for the Construction or Repair of Public or School Buildings.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Persons May Intervene and Become Parties to an Action—When] That hereafter any person, firm or corporation entering into a formal contract with the state, any county or municipal corporation, school district or independent school district in the state of South Dakota for the construction of the state any county or municipal corporation school building, or for repairs upon any school building, shall be required, before commencing such work to execute the usual penal bond for the faithful performance of said contract with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him

or them with labor and materials in the prosecution of work provided for in such contract; and any person, firm or corporation who has furnished labor or materials used in the construction or repair of any school building and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by such state, county, municipal corporation, school district or independent school district on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of such state, county, municipal corporation, school district, or independent school district. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of such claims and demands, then, after paying the full amount due such state, county, municipal corporation, school district or independent school district, the remainder shall be distributed pro rata among such intervenors.

§ 2. Suit May be Brought—When] If no suit should be brought by such state, county, municipal corporation, school district or independent school district within six months from the completion and final settlement of such contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to such state, county, municipal corporation, school district or independent school district, that labor or materials for the prosecution of such work has been supplied by him or them and payment for which has not been made, be furnished with certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of such state, county, municipal corporation, school district or independent school district in the circuit court in the county in which said contract was to be performed and executed and not elsewhere, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: provided, that where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof and shall be commenced within one year after the performance and final settlement of said contract, and not later; and provided, further, that where suit is so instituted by a creditor or creditors only one action shall be brought, and any creditor may file his claim in such action and be made a party thereto within one year from the completion of the work under said contract, and not later; and provided, further, that costs shall not be taxed in said suit against such state, county, municipal corporation, school district or independent school district. If the recovery on the bond should be inadequate to pay the amounts found due all such creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The

surety on such bond may pay into court for distribution among said claimants and creditors the full amount of the sureties' liability, to-wit: the penalty named in the bond, less any amount which said surety may have had to pay to such state, county, municipal corporation, school district or independent school district by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability; provided, further, that in all suits instituted under the provisions of this act such personal notice of the pendency of such suit, informing them of their right to intervene, as the court may order shall be given to all known creditors, and in addition thereto such notice shall be given by publication in some newspaper of general circulation, published in the county where the contract is being performed for at least three successive weeks, the last publication to be at least three months before the time limited therefor.

Approved March 4, 1907.

ELECTIONS

CHAPTER 139

(H. B. 14)

RELATING TO PRIMARIES

AN ACT to Provide for the Holding of Primary Elections for the Purpose of Making Party Nominations, Electing Party Delegates and Committeemen, and Establishing Rules for Regulating the Same.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Terms Defined] The following words and phrases used in this act shall, unless the same be inconsistent with the context, be construed as follows:

1. The word "primary" shall mean the primary election provided for by this act.

2. The words "November election" shall mean the general election held in November.

3. The word "precinct" shall mean a district established under the law within which qualified electors vote at one polling place.

4. Public places for posting notices shall include the outer door of polling places, the postoffice lobby, if any, and the front outside door of any public building or any other place where notices are usually posted.

§ 2. Statute, How Construed] This statute shall be liberally construed, so that the real will of the electors may not be defeated by mere technicality.

§ 3. Shall be Nominated and Elected at Primary Election] Hereafter all party candidates for the elective officers hereinafter named, and for the office of United States senator, shall be nominated, and all party delegates to political conventions, and all precinct, county, state and national committeemen shall be nominated and elected at a primary election held in accordance with the provisions of this act. All other nominations of such candidates shall be by petition in the manner now provided by law.

§ 4. Law Not Applicable, When] This act shall not apply to municipal, town, township and school district officers, but may be adopted by either by a majority vote upon such proposition at any election held therein.

§ 5. Primary, When Held] The primary election herein provided for shall be held at the regular polling place in each precinct throughout the state on the second Tuesday in June, 1908, and biennially thereafter, between the hours of eight o'clock a. m. and five o'clock p. m., and any person entitled to vote at such primary election who is an employe shall be entitled to the same privileges from his employer for the purpose of voting at a primary election as are given him by law to vote at the general election in November.

§ 6. Nominating Petition] Subdivision 1. The name of no candidate for United States senator, nor of any candidate for member of congress, nor for any state office, including judges of the circuit court, nor for national committeemen, shall be printed upon any official ballot used at a primary held as herein provided, unless at least six weeks prior to the date for said primary, a nominating petition shall have been filed in the office of the secretary of state in substantially the following form:

Nominating Petition

We, the undersigned, qualified electors of the state of South Dakota, and members of the.....party, do hereby nominatewho resides at.....and who is a member of the.....party, as a candidate of the.....party for the office of.....to be voted for at the primary to be held on the second Tuesday in June, 19...., and we, and each of us, for himself severally, do further declare that we intend to support the candidate named herein at said primary and to vote the.....ticket at the following November election.

Name of Signers	Residence Precinct and Postoffice	County	Date of Signing
.....
.....
.....

Said nominating petition, before the same shall be filed in the office of the secretary of state, must have affixed thereto not less than

one per cent of the voters of the party of which the petitioners are members cast in the entire state at the preceding general election for the office of governor, except in the case of petitions filed in behalf of candidates for judge of the circuit court, which last named petitions shall have affixed thereto the names of not less than one per cent nor more than five per cent of the voters of the party of which the petitioners are members, cast in the judicial circuit for which they are proposing a candidate, at the preceding general election for governor, as shown by the official returns.

Subdivision 2. The name of no candidates for any county or legislative office, nor candidate for election as member of any state central political committee from such county, shall be printed upon any official ballot used at such primary, unless at least thirty days prior to such primary, a nominating petition shall have been filed in his behalf in the office of the county auditor of the county in which he is a candidate, in substantially the following form:

Nominating Petition

We, the undersigned, qualified electors of the county of.....
and members of the.....party, do hereby nominate
.....who resides in.....
voting precinct in.....county, and whose postoffice
address is....., South Dakota, and who is a
member of the.....party, for the office of
.....in said county, to be voted for at the
primary to be held on the second Tuesday in June, 19..., and we, and
each of us for himself severally, do further declare that we intend to
support the candidate named herein at said primary and to vote the
.....ticket at the following November election.

Name of Signers	Residence Precinct and Postoffice	County	Date of Signing
.....

Said nominating petition, before the same shall be filed in the office of the county auditor, must have affixed thereto the names of not less than three per cent nor more than five per cent of the voters of the party of which the petitioners are members cast in the county named at the preceding general election for governor, as shown by the official returns.

Subdivision 3. No candidates for delegate to any state convention to be held under the provisions of this act, shall have his name printed upon the official ballot used at any primary unless at least twenty days before said primary, he file in the office of the county auditor of the county in which he is a candidate, a written request in the following form:

I,....., of.....voting
precinct in the county of.....State of South Dakota,
do hereby declare that I am a qualified elector residing in the above

precinct and entitled to vote therein; that my postoffice address isin said county; that I am a member of the.....party, believe in its principles and intend to vote the ticket of that party at the coming November election; that I am a candidate in good faith for election as a delegate to thestate convention to be held at..... South Dakota, on the.....day of....., 19..., and request that my name as such candidate be printed upon the official ballot used at the coming primary.

Subscribed and sworn to before me this.....day of.....19....

Said request shall be filled out, signed and verified by the candidate.

Provided, that a group of candidates uniting together under a common motto expressed in not to exceed five words, and comprising a number equal to the number of delegates to which any county is entitled in any state convention may join in one request, as follows:

We, whose names are appended to this application, and each of us, do hereby declare that we are residents and qualified electors of the county of....., state of South Dakota; that we and each of us are members of the.....party and believe in its principles and intend to vote the ticket of that party at the coming November election; that we, and each of us are candidates in good faith for delegates to the.....state convention to be held at.....South Dakota, on the.....day of.....19...; that our motto is

We request that our names as such candidates, under the above motto, be printed in a list upon the official ballot used by theparty at the coming primary. Our respective names, precincts in which we reside, and postoffice addresses are hereto affixed:

Names	Residence by Precincts	Postoffice Address
.....
.....

Appended to said request must be an affidavit in substantially the following form, signed by not less than three of said candidates, sworn to before some officer authorized to administer an oath:

State of South Dakota, }
 County of..... } ss.

being duly and severally sworn as hereinafter certified, say, that they are personally acquainted with each of the persons named in the foregoing application and declaration; that each and every one of said persons is a qualified resident elector of the county of....., state of South Dakota, and a member of the.....party. That each person whose name is affixed to the within and above request signed the same in person.

Subscribed and sworn to before me this.....day of
.....19....

No second list of delegates shall be permitted to use the same motto. Such joint request, when properly filled out and executed, if filed with the county auditor of the proper county not less than twenty days before the holding of the primary, shall entitle said candidates to have their names listed together under the motto named in their request, and printed in the official ballot of their party used at the primary.

Subdivision 4. To each of said nominating petitions, as provided in subdivisions one and two, each petitioner shall affix his own signature with pen and ink or by indelible pencil, and shall add after his name, his voting precinct, postoffice address, county and date of signing. No petitioner shall sign more than one such petition relating to the same office in the same year, and no name shall be counted upon such petition unless the same appears to have been signed within three months prior to the holding of the primary before which the person in whose behalf it is filed is to be a candidate. It shall not be necessary that one paper shall contain all the signatures, but a single petition may be made up of one or more papers each having the requisite heading. Separate papers in proper form and duly signed, may, before filing, be bound together and shall be regarded as one petition, and shall be sufficient if the aggregate number of signatures upon all is not less nor more than the number required by this act.

Provided, that where separate papers are circulated in behalf of the same candidate, each separate paper must have appended thereto the affidavit herein specified. Said affidavit shall be in substantially the following form:

State of South Dakota. }
County of..... } ss.

I,.....being first duly and solemnly sworn, on my oath state that I am a qualified voter of the state of South Dakota. That I am acquainted with all the persons whose names are affixed to the above and foregoing paper and know that each one of said persons signed said paper personally and added

thereto his place of residence, postoffice address and date of signing. That each and all of said persons are residents and qualified electors of the county of.....state of South Dakota. That each of said persons signed said petition with full knowledge of its contents. That I intend to support the candidate named in said petition at the primary, and to vote the ticket nominated thereat by theof which the candidate named in this petition is a member.

.....
 Subscribed and sworn to before me this.....day of
19...

.....
 Said affidavit shall not be made by the candidate, but each candidate provided for in subdivisions one and two shall file with his nominating petition a written and signed declaration that he will qualify as such officer, if nominated and elected. Blank lines upon additional sheets securely fastened to a top sheet having the prescribed heading may be used in obtaining signatures and shall be regarded, together with the top sheet having the proper heading, as one paper, to which only one affidavit need be appended.

Subdivision 5. In legislative districts comprised of more than one county, the nominating petition in behalf of a candidate for the legislature from such district shall be filed in the office of the county auditor of the county in said district in which said candidate resides at least thirty days prior to the holding of the primary, and within ten days thereafter said auditor shall make a certified copy or copies thereof, as the case may be, and forward the same to the auditor of each other county in said legislative district for filing. Said nominating petition shall be in substantially the same form as that required for candidates for county officers, with the same requirements as to signatures and form of execution and verification and the timely filing thereof shall entitle the candidate to have his name printed upon the official ballot used by his party at the primary in each county in such legislative district.

§ 7. Official Ballot] Each official ballot used at the primary shall have sufficient space provided under the words "For Precinct Committeemen," to permit the voter to write therein the name of his choice of candidates for such position.

§ 8. Fees for Filing Petition] Each candidate whose nominating petition must be filed in the office of the secretary of state, as herein provided, shall, at the time of filing such petition, pay to said secretary the sum hereinafter specified, which shall be paid over by said secretary to the state treasurer and covered into the general fund towards reimbursing the state for expenses incurred in connection with carrying out the provisions of this act:

Candidates for party nominations for United States senator.

members of congress, governor, or members of supreme court, shall pay fifty dollars each.

Candidates for party nominations for judge of circuit court, secretary of state, state treasurer, railway commissioner, commissioner of school and public lands, state auditor and superintendent of public instruction shall pay thirty dollars each.

Candidates for party nominations to the office of attorney general shall pay fifteen dollars each.

Candidates for party nominations to the office of lieutenant governor shall pay ten dollars each.

Candidates for nomination and election to the office of national committeeman shall pay five dollars each.

§ 9. Duty of Secretary of State] At least twenty-five days before any primary, the secretary of state shall transmit to each county auditor a certified list containing the names and postoffice address of each person for whom nominating petitions have been filed under this act in his office, together with the name of the office for which he seeks the nomination and the political party he represents.

§ 10. Fees to be Paid County Auditor] Each candidate whose nominating petition must be filed in the office of the county auditor as herein provided, shall, at the time of filing such petition, pay to said auditor the sum hereinafter specified, which shall be paid over by said auditor to the county treasurer and covered into the general fund towards reimbursing the county for expenses incurred in carrying out the provisions of this section:

Candidates for party nominations for county treasurer, sheriff, auditor and register of deeds, shall each pay the sum of fifteen dollars.

Candidates for party nominations for county judge, states attorney, clerk of the circuit court and superintendent of schools, shall each pay the sum of ten dollars.

Candidates for party nominations for county commissioner, surveyor and coroner shall each pay the sum of five dollars.

Candidates for party nominations for the legislature, either house, shall each pay the sum of five dollars.

Candidates for party nominations for constable, justices of the peace, and for election as delegates to a state convention or member of the state central committee, shall each pay the sum of one dollar.

§ 11. Duty of Auditor] The county auditor shall, from the names filed in his office and the names forwarded to him by the secretary of state, prepare an official ballot for use at the primary for each political party for whom candidates have been presented by nominating petitions and requests under the provisions of this act. The names of all candidates in the same political party by whom, or for whom, nominating papers have been filed, shall be printed in the official ballot to be used by that party in the primary. Such official ballot shall be in the following form:

OFFICIAL PRIMARY BALLOT,.....PARTY

To vote for a person whose name is printed on the ballot mark a cross (X) in square at the LEFT of the name of the candidate for whom you desire to vote. In voting for precinct committeemen, write the name of the person for whom you desire to vote in the blank line at the lower end of the ballot provided for that purpose.

STATE, CONGRESSIONAL AND JUDICIAL		COUNTY AND LEGISLATIVE	
Vote for One	United States Senator	Auditor	State Senator
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for Two	Representatives in Congress	Treasurer	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Governor	Commissioner of School and Public Lands	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Lieutenant Governor	Superintendent of Public Instruction	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Secretary of State	Railroad Commissioner	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Judges of the Supreme Court	Register of Deeds	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Attorney General	Clerk of Courts	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Precinct Committeeman	Superintendent of Schools	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	National Committeeman	States Attorney	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	County Judge	County Commissioners	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Justices of the Peace	Constables	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe
Vote for One	Member State Central Committee	Precinct Committeeman (Write in a Name)	Vote for One
John Doe	John Doe	John Doe	John Doe
John Doe	John Doe	John Doe	John Doe

VOTE FOR DELEGATES TO THE STATE CONVENTION Candidates Running Separately

John Doe	John Doe
John Doe	John Doe
John Doe	John Doe

Candidates Running Together Under One Motto

Vote for all by placing a cross (X) in the circle at the top, or for such names in the list as you wish by placing a cross (X) in the square to the LEFT of the name of the candidate you wish to vote for. You may vote for any of the persons in either or both lists, provided you do not vote for to exceed.....in all.

Motto (Sample)	Motto (Sample)
"Against Bossism in Politics"	"Nominations by Direct Votes"
<input type="radio"/>	<input type="radio"/>
John Doe	John Doe
John Doe	John Doe

DELEGATES TO COUNTY CONVENTIONVoting Precinct

Vote for	Candidates Running Separately	(Write in Names)
John Doe
John Doe

Candidates Running Together Under One Motto

.....Voting Precinct

Vote for all by placing a cross (X) in the circle at the top, or for such names in the list as you wish by placing a cross (X) in the square to the LEFT of the name of the candidate you wish to vote for. You may vote for any of the persons in either or both lists, provided you do not vote for to exceed.....in all.

Motto (Sample)	Motto (Sample)
"Against Bossism"	"Nominations by Direct Votes"
<input type="radio"/>	<input type="radio"/>
John Doe	John Doe
John Doe	John Doe

§ 12. Delegates to County Conventions] Any elector of any voting precinct may be a candidate for delegate to the county convention of the party of which he is a member. If he desires his name as such candidate printed on the official primary ballot he shall at least twenty days before the primary deliver to the county auditor a slip of paper with his name, voting precinct, post office address, political affiliation and request to have his name printed upon said ballot as such candidate, and it will be the duty of the auditor to have the same printed upon the ballots used in his precinct. A group of candidates in any voting precinct, equal to the number of delegates such precinct is entitled to in a county convention, may unite in one list under a common motto in the manner provided in subdivision three of section six of this act in reference to choosing delegates to a state convention. A voter may, if he choose, disregard the printed names of candidates for delegates from his precinct to a county convention and write in the blank places left for that purpose the names of any other candidates for delegates he may wish to vote for, in which case the names so written shall be counted in the canvass of the votes. Delegates to all county conventions held by political parties for any purpose after the primary held on the second Tuesday in June shall be elected at said primary in the manner herein provided. Said county convention shall be held on the first Tuesday in July after the primary election at an hour and place to be fixed by the county central committee of the proper political party pursuant to a notice and call issued by the chairman thereof and published in at least one newspaper of general circulation in said county for thirty days prior to said convention. The county central committee of each political party shall fix the ratio of representation for each precinct in such county convention held in its behalf and each precinct shall elect its delegates to such county convention at the primary held in said county on the second Tuesday in June in the same manner in which it elects its precinct committeeman under the provisions of this act. The county auditor of such county shall leave a place upon the official primary ballot of each political party under the heading "Delegates to county convention" for the voter to write the name of candidates for such delegates so that the voter may write therein his choice of candidates in case he does not wish to vote for delegates whose names have been printed upon the ballot as hereinbefore provided.

§ 13. Color of Ballots—By Whom Designated] The color of the ballots of all political parties having a state organization shall be designated by the secretary of state. For parties having less than a state organization the county auditor of each county in which such parties have a ticket shall select the color of such ballots. Provided, that the ballots of each political party shall be of a separate and distinct color. Provided, further that when a color has been selected for

a party having a state organization such color shall not be again changed. Such color shall be selected upon application of the chairman of the state central committee of each party, and as soon as selected, the secretary of state shall immediately notify the county auditor of each county of such selection.

§ 14. Official Primary Ballot] The "Official Primary Ballot" of each political party shall be separately printed in black ink upon paper of uniform quality and texture; but the "Official Primary Ballot" of no two political parties shall be of the same color, or tint, within any one county. The ballots shall vary in form and size only as the names of candidates and officers may require.

§ 15. Duty of County Auditor] The county auditor shall at least thirty days prior to the date of the primary post in a conspicuous place in his office an announcement of the color of the official primary ballots of the respective parties, and shall also at least thirty days prior thereto publish such announcement for at least one week in at least two newspapers of general circulation in the county.

§ 16. Designation of Ballot] At the top of the ballot shall be printed in large letters words designating the ballot. If a republican ballot the words shall be "Republican Primary Ballot." If a democratic ballot the words shall be "Democratic Primary Ballot," and in like manner for each political party.

§ 17. Auditor to Furnish Copy to Printer] The county auditor shall furnish the copy of the official ballot to the printer not less than twenty days prior to the date of the primary and the necessary number of official primary ballots and sample ballots shall forthwith be printed at the expense of the county.

§ 18. Notice of Primary Election] Not less than thirty days prior to the holding of the primary the county auditor shall prepare a notice in substantially the following form:

Notice of Primary Election

Notice is hereby given that, as provided by law, a primary election will be held at the regular polling place in all the voting precincts of county, South Dakota, on the . . day of June, 19.., between the hours of 8 o'clock a. m. and 5 o'clock p. m. for the purpose of allowing the members of each political party in the state by their own separate party vote to choose their several party candidates for all state, congressional, judicial, legislative and county offices which are to be filled by election at the next general election; to elect their several national, state and precinct committeemen and delegates to the several party conventions; also to nominate in the same manner the several party candidates for the office of United States senator, which is to be filled by the next legislature of this state.

Dated this.....day of....., 19..

.....
County Auditor

§ 19. Further Duties of County Auditor] The county auditor shall also, at the expense of the county, procure a sufficient number of printed copies of the notice of the primaries published under the provisions of section 18 and shall at least fifteen days before the holding of the primary mail not less than ten copies thereof to the town clerk of every organized civil township in the county at his postoffice address; also to the clerk, auditor, or secretary, as the case may be, of every incorporated city, town or village in his county a sufficient number so that not less than five copies may be posted in each voting precinct in such city, town or village. In all cases where established voting precincts are not within the limits of an organized township, or within a city, town or village the auditor shall at the same time mail to the committeeman of each political party having such committeeman therein not less than five copies of said notice.

§ 20. Duties of Officers and Committeemen] It shall be the duty of each officer and committeeman named in section 19 of this act upon receiving said notices, not less than ten days before the holding of the primary, to post the same in five public places in his precinct, most likely to give notice to the electors. Upon filing with the county auditor proof that he posted the notices as required each of said persons shall be paid by the county the sum of three dollars, provided that in a city having more than one voting precinct the clerk or auditor thereof shall be paid not to exceed one dollar for each precinct in which he posted the notices.

§ 21. Duty of Secretary of State] At least thirty days before the holding of the primary the secretary of state shall cause to be published in one newspaper of general circulation in each judicial circuit of the state a certified list containing the names and postoffice address of each person for whom nomination papers have been filed in his office and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate. The expense for said publication in each of said newspapers once a week for two successive weeks shall be paid by the state.

§ 22. Back of Ballot—How Printed] On the back or outside of the "Official Primary Ballot," so as to appear when folded shall be printed the words "Official Primary Ballot," followed by the designation of the county where used, the date of the primary election and a fac simile of the signature of the county auditor of such county.

§ 23. Auditor to Deliver Ballots to Sheriff] The county auditor shall not less than ten days before the holding of the primary deliver to the sheriff a sufficient number of official primary ballots to serve the needs of the voters in all of the precincts in the county, put up in separate sealed packages, with marks on the outside clearly designating the election precinct for which they are intended, and the number of ballots enclosed for each political party, and a receipt

thereof shall be taken by him from the sheriff; whereupon the sheriff shall forthwith and not less than twelve hours before the time fixed for the opening of the polls for the primary election deliver the same, together with poll books, return blanks, supplies and apparatus hereinafter provided for to the several judges of the primary election hereinafter designated. For his service the sheriff shall receive from the county the same compensation now paid under the law for the same character of service performed for the November election.

§ 24. Number of Ballots to be Provided] The number of "Official Primary Ballots" for each political party in each election precinct shall be not less than one hundred ballots for each fifty votes cast in said election precinct by said political party at the last preceding general election.

§ 25. Auditor to Provide for Extra Primary Ballots] The county auditor shall provide and retain in his office until after the primary election an ample supply of extra official primary ballots for each political party and for each election precinct; and if, at any time before or during the primary election any of the official primary ballots shall be lost, destroyed or exhausted, on written application signed by the primary judges, or any one of them, then said auditor shall immediately cause to be delivered to said primary judges such supply of extra official primary ballots as may be required to comply with the provisions of this act.

§ 26. Judges—How Appointed] The county auditor shall, not less than fifteen days before any primary, appoint judges for each of the several voting precincts of his county, which appointment shall be made from lists of names submitted to him by the chairmen of the county central committees of the different political parties, but in case no names are presented the auditor shall use his own discretion. All judges appointed must be qualified electors in the precinct for which they are appointed. Three judges shall be appointed for every precinct. If three or more parties have official ballots for use at the primary one judge shall be appointed from each party casting the highest number of votes as shown by the returns of the last preceding general election. If but two parties have such ballots at the primary then the judges shall be selected therefrom, and the party having a majority of the votes in the precinct at the last preceding general election shall have a majority of such judges.

§ 27. Superintendent—Duties of] The county auditor when appointing judges of a primary under this act shall designate one of such judges as superintendent, who shall erect and have ready for the primary a sufficient number of booths which shall be furnished by the county, together with such supplies and conveniences as shall enable the voter to prepare his ballot. The provisions and rules for voting shall be the same as now prescribed by law for voting at any general election.

§ 28. Failure to Qualify—Vacancy How Filled] If any person appointed as a judge of a primary election shall neglect to be sworn or to act as such the place of such person shall be filled by the electors of the precinct present from different political parties as herein provided, and the person so elected to fill the vacancy shall be vested with the same power for that primary as if appointed judge of election by the county auditor.

§ 29. Clerks] The said judges shall choose two persons to act as clerks of election.

§ 30. Judges May Administer Oath] The judges of said primary election and each of them are hereby empowered to administer to each other and to the clerks the oath of office and to administer the oath to any voter when challenged.

§ 31. Oath—Form of] Previous to votes being taken the judges and clerks of the election shall severally take an oath in the following form:

I, do solemnly swear (or affirm, as the case may be,) that I will perform the duties of judge, (or clerk, as the case may be,) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same.

§ 32. Judge Must Challenge—When] If any judge of the primary shall know, or have reason to believe that any person offering to vote is not a qualified elector or is not a member of the political party whose party ticket he is attempting to vote, it shall be his duty to challenge the right of such person.

§ 33. Challenge—Oath—Form of] Any person may challenge the right of any person to vote the ballot of the party making the challenge at the primary. If the challenge is made on the ground that the person offering to vote is not a qualified elector of the precinct, one of the judges shall tender to him the oath used under the law of this state at a general election in a similar case, accompanied by like conditions. If the challenge is made upon the ground that the person challenged is not in good faith a member of the political party whose ticket he requests to vote at the primary one of the judges shall tender the following oath:

"You do solemnly swear, (or affirm, as the case may be,) that you are twenty-one years of age; that you are a citizen of the United States, or have declared your intention to become a citizen conformably to the laws of the United States; that you have resided in the United States one year, in this state six months, in this county thirty days, and in this precinct ten days next preceding this primary election; that you have not voted in any precinct at this general primary election; that you are now in good faith a member of the party and a believer in its principles as declared in its platform in the last preceding national and state conventions; and that you do

now in good faith intend to support the principles of that party and the candidates nominated by it at the primaries now being held."

§ 34. Vote May be Rejected—When] If any person so challenged shall refuse to take such oath so tendered his vote shall be rejected, and after taking such oath, if the judges have good reason to believe that the person challenged is not acting honestly, before receiving his vote, they shall require him to subscribe the oath, which shall be written out and preserved with the poll books for future reference.

§ 35. Illegal Voting—Penalty] Every person knowing himself to be ineligible who votes or offers to vote at any primary election within this state shall be punished by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding six months.

§ 36. Perjury] If any person so challenged shall take one or the other oaths provided for in this act knowing the same to be false he shall be deemed guilty of willful and corrupt perjury, and shall, on conviction, suffer such punishment as now is or shall hereafter be prescribed by law for persons guilty of perjury.

§ 37. Challengers May be Appointed] In addition to the right of every person present at a primary to challenge a voter the chairman of the party central committee of each political party shall have the right to appoint one challenger in each precinct. Such challenger must be a qualified elector of the precinct in which he is appointed to act. He shall be protected in the discharge of his duties by the judges of the primary and by peace officers, and shall be permitted to remain within the polling place in such position as will enable him to see each person as he offers to vote, and said challenger may remain within the polling place throughout the canvass of the vote and until the returns are signed.

§ 38. Primary Elections—How Conducted] Primary elections shall be conducted in conformity with the laws governing the conduct of general elections in so far as the same are not modified by the provisions of this act or are not inconsistent with its terms.

§ 39. Interference Prohibited] It shall be unlawful for any person who is a member of one political party to in any way interfere with the voting of any other political party at any primary, or in any way to obstruct the voting of any party at such primary or to create any disturbance, or to in any way intimidate any elector from attending at any primary or voting thereat. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and punished accordingly.

§ 40. Unlawful to Vote Unless Qualified] It shall be unlawful for any person not a qualified elector of the ward or precinct in which any primary is held to vote in any manner or on any question which may come before said primary. Any person who shall violate the

provisions of this section shall be deemed guilty of a misdemeanor and punished accordingly.

§ 41. Unlawful to Vote More Than Once—Penalty] Any person who votes more than once at any primary or offers to vote more than once, either in the same or any other precinct is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding one year.

§ 42. Person Knowing Himself Not to be Qualified] Any person knowing himself not to be a qualified elector who votes or offers to vote at any primary is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding six months.

§ 43. Solicitation of Illegal Votes—Penalty] Every person who procures, aids, assists, counsels or advises another to give his vote at any primary knowing that such person is disqualified is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days.

§ 44. Inducing Persons to Vote in Other Precincts—Penalty] Every person who procures or counsels another to enter any town, ward or voting precinct for the purpose of giving his vote at the primary, knowing that such person is not entitled to vote, is guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days.

§ 45. Voting in Precincts in Which One Does Not Reside—Penalty] Every person who at any primary knowingly votes or offers to vote in a precinct in which he does not reside or in which he is not authorized by law to vote, and any person who knowingly votes the primary election ballot of a political party of which he is not a member is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days.

§ 46. Intoxicating Liquors Prohibited] Every person who sells, gives away or disposes of any intoxicating liquors as a beverage on the day of any primary election, in or about the place where any such primary is held, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars or by imprisonment in the county jail not more than thirty days.

§ 47. False Returns—Penalty for Making] Any judge or clerk of a primary election or any member of any board, county or state whose duty it shall be to keep, make, deliver or canvass returns of any primary or primaries who shall knowingly and willfully make any false canvass, count or certificate, abstract, summary list

or return, or who shall knowingly and willfully falsely alter or change the same after being correctly made, or who shall fail to preserve, forward and deliver any returns entrusted to him for that purpose shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished by a fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding three months.

§ 48. Duty of Voter and Judges] Every voter upon requesting an official primary election ballot at any primary shall in a distinct and audible voice state his name and the name of the political party of which he is a member. The judges shall keep the ballots of each party separate, and unless said person is challenged as herein provided one of the judges shall stamp and deliver to him an official ballot belonging to the party of which he is a member, and the voter shall take the same into the booth, and, after marking it as directed, shall fold and return the same to the judges, one of whom shall write the initials of his name on the back thereof and deposit it in the ballot box.

§ 49. Poll Books] A registry poll book and duplicate and poll list and duplicate for each political party having an official ballot thereat shall be furnished for use of the judges and clerks at each precinct by the county auditor at the expense of the county.

§ 50. Upon the opening of the polls one of the judges shall openly announce that fact; and at least thirty minutes before the closing of the polls announcement shall be made in like manner that the polls will be closed in half an hour.

§ 51. No Adjournment Shall be Taken] After the opening of the polls at a primary election no adjournment shall be had nor recess taken until all the votes cast at such primary election shall have been counted and canvassed.

§ 52. The votes shall be canvassed at the place by the officers and under the same rules and restrictions that govern judges with like duties at the general election.

§ 53. Marked Ballots] No official primary election ballot shall be marked by the voter except as directed thereon for the use of the cross (X) at the left of the name of the candidate or in the circle at the head of a list of delegates under a motto, or by writing therein names of delegates and precinct committeemen. Official primary ballots otherwise marked shall not be counted. Such ballots and others not counted by reason of some defect therein shall be marked "defective," and official primary ballots to which objection has been made by either of the judges or appointive challengers shall be marked "objected to" on the back thereof, and the memorandum signed by the judges stating how it was counted, shall be written upon the back of each ballot so marked and all official primary ballots marked "defective" or "objected to," shall be enclosed in an envelope and securely sealed and endorsed so as to clearly disclose its

contents. All official primary ballots not voted, and all that have been spoiled by voters while attempting to vote shall be returned by the primary judges to the county auditor and a receipt taken therefor and shall be preserved three months.

§ 54. Name of Voter Entered by Clerk] The name of every voter whose vote is accepted at a primary election shall be entered by the clerk in the poll book and duplicate of the party of which he is a member.

§ 55. Canvass of Votes] Immediately upon closing the polls the primary judges shall proceed to canvass the vote polled in the manner following:

1. They shall proceed to ascertain the number of names entered upon the registry poll book lists for each political party separately.

2. They shall then ascertain how many ballots have been deposited in the ballot box for each political party separately.

3. If the number of ballots of any political party exceeds the number of names of voters of such party entered upon its party poll books said ballots shall be folded and replaced in the ballot box from which they were taken and the box closed and well shaken and again opened, and one of the judges who shall be blindfolded shall draw out of said ballot box and destroy so many of such ballots as shall be equal to such excess.

4. They shall then place the ballots of each political party in separate piles, and proceed to count those of each political party separately, and as the judges shall open and read a ballot each clerk shall carefully mark upon the tally sheets, blanks for which shall be furnished for the purpose by the county auditor, the votes which each candidate of the party whose name is written or printed on such ballot has received, in a separate column for that purpose, with the name of such candidate, the name of his political party and the name of the office for which he is a candidate at the head of such column.

5. After the ballots of a political party have all been read and entered in the tally sheets the clerks shall make footings therein so as to show the total number of votes cast for each candidate whose name is printed or written upon the official primary ballot of such political party and certify the same to be correct.

Thereupon the judges shall set down in the registry poll books of such political party in a space and form to be provided therein for that purpose the name of each candidate voted for, written at full length, the name of the office for which he is a candidate, the total number of votes which said candidate received and the total number of votes cast by said political party at said primary, and shall certify the same to be true and correct; said entry in the party registry poll books shall be made in substantially the following form:

..... Party

At the primary election held in this precinct on the .. day of

....., A. D., 19.., the respective candidates whose names were printed or written on the official primary ballot of said..... party, received respectively the following votes:

Name of Candidate	Title of Office	Number of Votes
John Doe	United States Senator	000
Richard Roe	Governor	000

(And so on for each candidate.)

Total number of votes cast by said.....

Party

We hereby certify the above and foregoing to be true and correct.

Dated this .. day of, A. D., 19..

.....

Primary Judges

§ 56. Official Ballots Must be Preserved.] After the votes of a political party have been counted and canvassed and the returns certified to, all the official primary ballots except those marked "defective" or "objected to" shall be strung upon a strong thread or twine or wire, separately for each political party, in the order in which they have been read, and shall thereupon be carefully sealed in wrappers endorsed as follows:

"Ballots of the party cast in precinct, in county, in South Dakota."

§ 57. Poll Books and Tally Sheets Must be Delivered to County Auditor] The registry poll books, with the certificate of the primary judges written thereon and the tally sheets, together with the wrappers containing the ballots, shall be carefully enveloped and sealed up together, properly endorsed, and placed in the hands of the superintending judge, who shall deliver. (or give to one of the other judges or to one of the clerks who shall deliver) the same, with the ballot box, to the county auditor at his office within ten days after said canvass has been completed.

§ 58. Compensation] Each precinct judge and clerk performing the duties at a primary election imposed upon him by this act shall receive from the county the same compensation now paid to judges and clerks of the general election.

§ 59. Canvass of Votes] As soon as complete returns are delivered to the county auditor from all the voting precincts in which a primary election was held he shall, with the assistance of the clerk of courts and county judge, open and canvass all of said returns and make separate tabulated statements for each political party, which shall show, in appropriate columns and under proper headings, the

total number of votes cast in the county for each candidate whose name is printed or written upon the official primary ballot of one of the political parties and the same shall be kept on file in the office of the county auditor. Each county auditor within fifteen days after the primary election has been held, shall forward under seal to the secretary of state a certified abstract for each political party having upon its official primary ballot the name of any candidate for whom a nominating petition was filed in the office of the secretary of state, showing the total number of votes cast in such county at the primary for each of such candidates, which abstract shall be signed by such auditor under his official seal and by the clerk of courts under his official seal and by the county judge.

§ 60. State Canvassing Board—Duties of] Immediately upon receiving returns from the county auditors of all the counties as provided in the last section the same shall be canvassed by the same state officers as are directed by the general election laws to canvass returns after a general election. Such canvassing boards shall, without delay, open the returns and certify tabulated statements thereof separately for each political party. Such statements shall show, under appropriate headings, the total number of votes cast for each candidate in whose behalf a nominating petition was filed in the office of secretary of state by the voters of the political party before which he stood as a candidate, and after being signed by the members of said board and attested by the great seal of the state, shall be filed in the office of the secretary of state.

§ 61. Nominations] Any candidate for nomination whose name is printed upon any official primary election ballot who receives the highest number of votes cast by the voters of his party for any candidate for nomination to the office for which he is a candidate, and not less than thirty per cent. of the total vote cast in his party for all the candidates for nomination to such office at the primary election shall be the nominee of his party for such office, and any candidate for national, state or precinct committeeman who receives the highest number of votes cast for any candidate for election to the position for which he is a candidate shall be duly elected to such position. In all cases where no candidate receives as high as thirty per cent. of the total vote cast by the voters in his party for all the candidates for the same office for which he is a candidate no nomination shall result, but such candidates shall submit to the decision of the following state or county convention, as the case may be. Such convention must decide among the candidates whose names were submitted to the voters at the primary and cannot consider new candidates. The convention shall nominate one of the contesting candidates and certify his nomination to the secretary of state or to the county auditor as provided under existing laws.

§ 62. Certificate of Nomination—How Issued] If the office

be an elective one, for which his nominating petition was filed in the office of the secretary of state, a certificate of his nomination shall be issued to such successful candidate by the state canvassing board under the great seal of the state, and if such successful candidate was voted for as a party candidate for nomination to the office of United States senator the state board of canvassers shall issue to him a certificate under the great seal of the state declaring him to be the regularly nominated candidate of his political party for the office of United States senator to be filled by the next regular session of the legislature of this state. To the person who received the highest number of votes cast by his party at all the primaries in this state for the position of national committeeman the state canvassing board shall issue a certificate declaring him to be duly nominated as a member of the national committee of his party for the ensuing four years.

§ 63. Endorsement of United States Senator] The endorsement by popular vote of a party candidate for United States senator as provided by this act and the issuance to such candidate of a certificate of nomination as herein provided shall have the force and effect of an instruction to such members of the legislature of the same political party as such candidate as were nominated at the same primary election to vote for and support such candidate in the legislature for the office of United States senator.

§ 64. Persons Declared Elected—Names to Appear on Official Ballot] If such office be an elective one for which his nominating petition was filed in the office of the county auditor a certificate of his nomination for that office by his party shall be issued to such successful candidate by the county canvassing board herein created under the seal of the county.

And if such office be one in which the candidate was seeking election at the primary as a state or precinct committeeman of any political party or as a delegate to any political convention, the candidate for state or precinct committeeman, also the candidate or candidates for delegates who received the highest number of votes cast by the voters of any given political party at the primary for any candidate for state committeeman or for any candidate for precinct committeeman, or for any candidate or quota of candidates for delegates to a political convention shall be declared elected to such position respectively in such political party, and a credential or certificate shall be issued to such successful candidate by the said canvassing board. And all successful party candidates for nomination for elective offices whose nominating papers were filed in the office of the secretary of state or in the office of any county auditor, under the provisions of this act, shall have their names as such candidates printed upon the official ballot for use at the succeeding November election, and the name of no other party candidates for the same offices in the same political parties shall appear thereon.

§ 65. State Conventions—When Held] The state conventions for each political party for which delegates are elected at the primary herein provided for shall be held on the second Tuesday in July, 1908, and biennially thereafter. At said convention held in 1908 and quadriennially thereafter each party shall nominate its candidates for presidential electors. Each county shall be entitled to one delegate to each party state convention for every one hundred votes or major fraction thereof cast by such political party in said county for its party candidate for governor at the last preceding general election.

The state central committee of each political party shall, at least sixty days prior to the holding of its state convention aforesaid fix the place and hour for holding the same and apportion the delegates to the several counties upon the basis of representation herein provided for, and shall issue and publish a call for such convention in at least five newspapers in the state most likely to give notice to the members for at least sixty days prior to the holding of said convention.

§ 66. Party Platform] At said state convention held by each party the party candidates nominated and the members of the party state central committee elected at the preceding primary shall, conjointly with said convention, make and declare the party platform.

§ 67. Party Delegates—How Chosen] Party delegates to national party conventions shall be chosen by each political party in this state in the year 1908 and quadriennially thereafter as follows:

1. County conventions for the purpose of electing delegates to the state convention to choose delegates to such national convention shall be held by each political party in each county on the fourth Tuesday in March of the years in question at such hour and place as the county central committee of such party shall determine. Said committee shall publish a notice and call for the same for thirty days prior to the holding of such convention. The basis of representation from the several precincts in the county to such county convention shall be determined by the county central committee and set forth in the published call.

2. The primaries to elect delegates to said county convention shall be held on the second Tuesday in March in each of said years in each established voting precinct in every county in the state between the hours of 3 o'clock p. m. and 8:30 o'clock p. m.

3. Judges and clerks of said primaries shall be appointed in the same manner and with the same powers, duties and obligations as those which have already been provided for in this act for primaries held bi-annually on the second Tuesday of June, and the ballot shall be prepared for the primary held under the provisions of this section by the county auditor in the same manner and under the same provisions prescribed for the election of delegates at said June primaries.

and the same requirements as to qualifications of voters, manner of voting, challenges, administering of oaths, keeping registry of names of voters in poll books, canvassing returns and making abstracts and certificates in registry poll books and tally sheets, delivering returns to county auditor and creating county canvassing board and prescribing its duties provided for primaries held on the second Tuesday in June shall apply to the primary held under the provision of this section, with the same penalties for violating the same requirements. The county auditor shall issue to the delegates from each precinct before the county convention convenes their credentials based upon the returns made to him. Provided, that whenever two-thirds of the members of the county central committees of the several political parties of any county at a regularly called meeting shall decide that there is not a sufficient contest over the selection of delegates from such county to the state conventions called to elect delegates to national conventions to justify the expense of holding a county convention, such county central committees shall have the power to name the delegates from said county and the chairman and secretary of the proper committee shall sign the delegate credentials.

4. Delegates to National Convention—When Chosen] All party state conventions held for the purpose of electing delegates to the national conventions shall be held on the first Tuesday in April, 1908, and quadriennially thereafter. The place and hour for said conventions shall be fixed and they shall be called in manner specified in section 65 of this act.

§ 68. Chairman of County and State Central Committee—How Chosen—Duties of] The chairman of the county central committee of each political party shall be selected from the various precinct committeemen by the candidates of that party for county offices. Such chairman shall select his own secretary, but said county central committee shall elect its treasurer. The chairman of the state central committee of each political party shall be selected by the candidates of that party for state and congressional offices, including party candidates for judges of the circuit court and the party candidate for United States senator. Said chairman shall select his own secretary, but said committee shall elect its own treasurer.

§ 69. County Conventions May Fill Vacancy] All county conventions held under the provisions of section 12 of this act shall have authority, in addition to that of making nominations in cases where no candidate for county office before the primary received thirty per cent. of the vote, to fill vacancies caused by the failure of candidates to file nominating petitions or by withdrawals, death, or any other reason, and to pass party resolutions.

§ 70. Temporary Organization—Who May Vote in] In all state and county conventions held under the provisions of this act the delegates who have received credentials from the canvassing

officers as herein provided shall have the right to vote in the temporary organization of the convention to which such credentials show them to have been elected, but no delegation which has been contested shall have a vote upon the adoption of that part of the report from a committee on credentials which determines a contest in its favor.

§ 71. Contests—How Made and Decided] Any candidate for nomination to any elective office whose name appears on the official primary ballot of any political party may contest the primary election as to the office for which he was a candidate for nomination by filing with the clerk of the circuit court of the county in which his nominating petition was filed, a complaint in writing within ten days after the returns have been canvassed by the county canvassing board or boards, setting forth the grounds of his contest, which complaint shall be verified by the complainant. Authority and jurisdiction are hereby vested in the circuit court to hear and determine such contests. When a complaint has been filed it shall forthwith be presented to the judge of the circuit in which it is filed, who shall note thereon the day of presentation and also the day and place when he will hear the same, which shall not be more than ten days thereafter. The candidate who appears upon the face of the returns to have been elected or to whom a certificate of nomination has been issued shall be named as defendant. When the court has fixed the day for hearing the complaint and order fixing such hearing shall be personally served upon the defendant. The defendant must answer on or before the day of hearing. The cause may be heard and determined by the court in term time or by the judge thereof in vacation and shall have preference in order of hearing to all other cases. The complainant shall give security for all costs. If, in the opinion of the court, the grounds alleged for the contest are insufficient the complaint shall be dismissed. If the grounds alleged are sufficient the court shall proceed in a summary manner and may hear evidence, examine the returns, recount the ballots and make such orders and enter such judgment as justice may require. The judgment of the court shall be final.

§ 72. Vacancies—How Filled] If for any reason after a nomination as a party candidate for an elective office has been made or a party committeeman elected, as provided in this act, a vacancy shall occur, the state or county committee of the political party, as the case may be, in which the vacancy occurs is hereby authorized to fill the same. Provided that party candidates for nomination to fill the vacancy at any special election called to elect a member of congress or member of the legislature caused by the death of such member, or by any other event shall be nominated in the same manner as is herein provided, except that in such cases the time and place for holding the primaries and convention shall be fixed by the several party committees.

§ 73. Tie Vote] In case of a tie vote the tie shall be determined by lot by the canvassers.

§ 74. Duty of Attorney General] It shall be the duty of the attorney general and secretary of state on or before July 1st, 1907, to prepare all forms necessary to carry out the provisions of this act.

§ 75. General Election Laws Govern—When] The provisions of the statute now in force in relation to the holding of elections, the solicitation of voters at the polls, the bribing or attempting to bribe voters, the sale of intoxicating liquors in the voting precincts, the manner of conducting elections and all other kindred subjects shall apply to all primary elections held under the provisions of this act, in so far as they are consistent with the same; the intent of this act being to place the primary election, except where otherwise provided, under the regulation and protection of the laws now in force as to general elections.

§ 76. Holidays] The days herein appointed for holding primary elections shall be legal holidays.

§ 77. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 78. Emergency] There being no law in this state providing for the nomination of party candidates for elective offices by a direct primary vote, an emergency is hereby declared to exist and this act shall take effect and be in force immediately upon its passage and approval.

Approved February 20, 1907.

CHAPTER 140

(H. B. 247)

REPEALING CERTAIN LAWS RELATING TO PRIMARIES AND CONVENTIONS

AN ACT to Repeal Chapter 107 of the Session Laws of 1905, Regulating Primaries and Conventions.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Repeal] That chapter 107 of the Session Laws of 1905, regulating primaries and conventions, be, and the same is hereby repealed.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 141

(H. B. 122)

PRESCRIBING THE QUALIFICATIONS OF VOTERS IN CERTAIN CASES**AN ACT** Prescribing the Qualifications of Voters in School Districts Situated in Two Counties.*Be it Enacted by the Legislature of the State of South Dakota:*

§ 1. Qualifications] Persons otherwise qualified to vote at school elections shall be entitled to vote at any school election held in any joint district lying partly in two or more counties if a resident for thirty days of any portion of such school district, though not a resident of the county in which the school election is held.

§ 2. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

§ 3. An emergency is hereby declared to exist, and this act shall take effect from and after its passage and approval.

Approved February 20, 1907.

CHAPTER 142

(S. B. 13)

PROHIBITING CORPORATIONS FROM MAKING CONTRIBUTIONS FOR POLITICAL PURPOSES**AN ACT** Prohibiting Corporations for Profit from Making Contributions to Candidates for Nomination or Election to Public Office, or to Political Committees or Members or Officers Thereof, or to Party Workers for Political Purposes, and Providing Penalties for the Violation of This Act.*Be it Enacted by the Legislature of the State of South Dakota:*

§ 1. Term Defined] That the term "candidate for nomination," as used in this act, shall include all persons whose names are presented for nomination to public office at any primary meeting, primary election, caucus or convention, whether such persons are actually nominated thereat or not.

The term "candidate for election," as used in this act, shall include all persons whose names are printed as candidates on the official ballots used at any election.

The term "public office," as used in this act, shall include every public office to which persons can be elected by vote of the people under the laws of his state.

The term "political committee," as used in this act, shall include every two or more persons who shall be elected, appointed or other-

wise chosen, or who shall have associated themselves together or co-operated together, for the purpose wholly or in part, of raising, collecting or disbursing money, or of controlling or directing the raising, collection or disbursement of money for political campaigns, for securing nominations or elections to office, whether such committee represents a regular political party organization, or the interest of some candidate or group of candidates.

The term "election expenses," as used in this act, shall include all expenditures of money, or other valuable thing, in furtherance of the nomination of any person or persons as candidates for public office, or in furtherance of the election of any person or persons to public office or to defeat the nomination or election to public office of any person or persons.

§ 2. Unlawful to Contribute] No corporation for profit, nor any officer, agent, or representative thereof, whether said corporation is incorporated under the laws of this or any other state, or any foreign country, shall pay, give, or lend, or authorize to be paid, given, or lent, any money, or other valuable thing belonging to such corporation to any candidate for nomination, or any candidate for election, or to any political committee, or to any other person for the payment of any election expenses whatever.

§ 3. Unlawful to Solicit] No candidate for nomination, or candidate for election, or political committee, or member or officer or employe thereof, nor any person in his or its behalf, shall directly or indirectly solicit, or accept, or receive from any corporation for profit, or from any officer, agent, or representative thereof, any money, or other valuable thing for use in the payment of any election expenses whatever.

§ 4. Penalty] Any person or corporation violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

§ 5. Who May Testify] No person shall be privileged from testifying in relation to anything herein contained, but no such person shall thereafter be prosecuted for any offense concerning which he may have been required to testify, and the testimony so given shall not be used in the prosecution of any such person in any criminal action whatever, except in actions for perjury in giving such testimony.

§ 6. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 15, 1907.

CHAPTER 143

(S. B. 254)

RELATING TO THE ELECTION OF TOWNSHIP OFFICERS

AN ACT to Amend Section 1007 of the Revised Political Code of 1903, as Amended by Chapter 136 of Session Laws of 1903, Relating to the Election of Township Officers at the Annual Meeting.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1007 of the Revised Political Code be amended to read as follows: "Section 1007. There shall be elected at the annual town meeting in each town one supervisor who shall hold his office for a term of three years and until his successor is elected and qualified; the senior member of the board of supervisors to be the chairman thereof; one clerk; one treasurer; one assessor; one justice of the peace; one constable; and one overseer of highways for each road district in the town; provided that justices of the peace and constables shall be elected for two years, except to fill vacancy; provided further, that said officers shall be elected by ballot, and the overseers of highways shall be elected by the electors of their respective road districts.

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 6, 1907.

CHAPTER 144

(H. B. 53)

RELATING TO PER DIEM OF JUDGES AND CLERKS OF ELECTION

AN ACT Entitled an Act to Amend Sections 1871 and 1933, Chapter 19, of the Revised Political Code of 1903, Relating to the Per Diem of Judges and Clerks of Election.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 1871 of the Revised Political Code of 1903 be amended to read as follows, to-wit: "The judges appointed under the provisions of the foregoing section shall be three persons who are qualified voters of the precinct or ward for which they are appointed. They shall be allowed the sum of three dollars each day for their services, to be paid from the county funds; provided, that in incorporated cities and towns such per diem shall be paid from the funds of such city or town in case of municipal elections. In the appointment of judges of election under this article if three or more parties have tickets on the official ballot one judge shall be appointed from each party having at least fifteen per cent

of the voters as shown by the returns of the last preceding election. If but two parties have tickets on such ballots then the judges shall be selected therefrom, and the party having a majority of the votes in the election precinct or ward at the last preceding general election shall have a majority of such judges. Provided, further, that when two or more parties join in supporting the same candidate or candidates for office they shall be considered as one political party for the purpose of this section and section 1902."

§ 2. Amendment] That section 1933 of the Revised Political Code of 1903 be amended to read as follows, to-wit: "There shall be allowed out of the county treasury of each county to the several clerks of election three dollars per day and the person carrying the poll books from the place of election to the county auditor's office the sum of ten cents per mile for going and returning."

§ 3. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 25, 1907.

CHAPTER 145

(S. B. 105)

REGULATING ELECTIONS IN CITIES AND TOWNS

AN ACT Entitled an Act Regulating Elections in Cities and Towns.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Election Precinct] Each city or incorporated town in this state having a population of less than five hundred people may, together with such outlying territory as may be attached to it by the board of county commissioners, constitute a single election precinct for general election purposes.

§ 2. Duty of County Commissioners] It shall be the duty of the county commissioners to appoint judges of elections for such precincts, and the elections shall be conducted therein in all things as in the case of elections in precincts in counties not organized into civil townships.

§ 3. All acts or parts of acts in conflict with this act are hereby repealed.

Approved February 25, 1907.

CHAPTER 146

(H. B. 11)

REGULATING CAMPAIGN AND ELECTION EXPENSES AND REQUIRING ACCOUNTS THEREOF

AN ACT to Regulate Campaign and Election Expenses and to Require Accounts Thereof to be Kept and Filed and Reports Thereof to be Made, and Providing Penalties for the Violation of This Act.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Terms Defined] The term "political committee," as used in this act, shall include every two or more persons who shall be elected, appointed, or otherwise chosen, or who shall have associated themselves together or co-operated together, for the purpose wholly or in part, of raising, collecting, or disbursing money, or of controlling or directing the raising, collection or disbursement of money for political campaigns, for securing nominations or elections to office, whether such committee represents a regular political party organization, or the interest of some candidate or group of candidates.

§ 2. Treasurer and Secretary—Duties of] Every political committee shall appoint a treasurer and a secretary which offices shall be held by different persons. All funds collected or received by such committee or by any of its members or employees for campaign or election expenses shall be turned over to said secretary who shall at once enter a record of the same in books kept by him for that purpose and shall pay the same to the treasurer of said committee, taking and filing the treasurer's receipt therefor. The treasurer shall not disburse said funds except upon orders drawn upon him by the secretary, each order showing upon the face thereof the purpose for which the money is paid, and to whom paid, and such vouchers shall be filed and kept by said treasurer.

Said treasurer shall be deemed to be and to remain the treasurer of said committee until the accounting herein required has been fully made. Unless such treasurer is first appointed or elected by the committee, it shall be unlawful for a political committee or any of its members or employees, including its secretary, to collect or receive money for any purpose. A record must be kept, open to the public, showing the names of the secretary and treasurer of the committee. All money collected or received by any political committee or by any of its members, for campaign or election expenses, shall be paid over to and made to pass through the hands of the treasurer and disbursed by him as aforesaid. It shall be unlawful for any political committee or any of its members or employees to disburse any money for election expenses except through the treasurer as herein provided. The treasurer of such committee shall be elected by the members of the committee at a regular meeting thereof but the secretary may be appointed by the chairman of the committee.

§ 3. Contributions Paid to Committee and Treasurer Only] No person who is not a candidate, or treasurer of a political committee, shall pay, give or lend, or agree to pay, give or lend, any money or other valuable thing, whether contributed by himself or by any other person, for any election expenses whatever, except to a political committee, or the treasurer thereof.

§ 4. Unlawful to Pay Money Except for Certain Purposes] No candidate, and no treasurer of any political committee, shall pay, give or lend, or agree to pay, give or lend, either directly or indirectly, any money or other valuable thing for any nomination or election expenses whatever, except for the following purposes:

First: For printing and actual, necessary traveling expenses, and actual necessary personal expenses incident thereto, stationery, advertising, postage, expressage, freight, telegraph, telephone and public messenger services.

Second: For dissemination of information to the public.

Third: For political meetings, demonstrations and conventions, and for the pay and transportation of speakers participating therein.

Fourth: For the rent, maintenance and furnishing of offices and halls.

Fifth: For the payment of clerks, typewriters, stenographers, janitors and messengers actually and necessarily employed.

Sixth: For the employment of watchers and challengers at primary meetings and elections.

Seventh: For the transportation of voters to and from the polls.

Eighth: For legal expenses, bona fide incurred in connection with any nomination or election.

§ 5. Account Must be Made] Every candidate for nomination, candidate for election and treasurer of a political committee or person acting as such treasurer, shall within thirty days after every election with which such political committee was concerned, or before which such candidate stood for nomination or election, if the amount received or expended shall exceed the sum of one hundred dollars,—file with the officers hereinafter specified, a true and correct account and statement in writing, subscribed and sworn to by him before an officer authorized to administer oaths, setting forth the total sum received and the total sum disbursed by him, for campaign and election expenses during his candidacy or since his appointment or election as such treasurer, and stating specifically whether or not any portion thereof was collected from a corporation or officer or agent thereof, and if so, naming such corporation and officer and the amount so contributed by it or him; also stating whether or not any portion of the total sum received by him was disbursed for any purpose not specified in section 4 of this act, and if so how much was so disbursed.

§ 6. Treasurer to Keep Record] Said treasurer shall keep a record of all funds received and disbursed by him, as aforesaid, and

the same shall be open to inspection at all times by any member of the committee of which he is treasurer, and shall be carefully preserved by him, together with the unexpended balance, if any, remaining in his hands, as shown by his report and books. And whenever the political committee which elected or appointed said treasurer has been succeeded by a like committee selected in an established manner by the same political party, or organization and said succeeding committee has chosen its treasurer as herein provided, such treasurer shall be deemed his successor in office and he shall forthwith turn over and deliver his said books, records and accounts, and unexpended balance to such successor. In case of his refusal to do so, his successor aforesaid shall have the right to sue him in the courts of this state for an accounting and for the possession of such records, books and accounts.

§ 7. Account Filed with Secretary of State] Every such account concerning campaign and election expenses incurred in the nomination or election of state officers, including judges of the circuit courts, shall be filed with the secretary of state; and every such account for expenses incurred in the election or nomination of county officers and members of the legislature shall be filed in the office of the clerk of the circuit court of the county in which the campaign and election occurred, and where such account is incurred in the election of members of the legislature from a district comprising more than one county, it shall be filed with the clerk of the circuit court in each county in such district. And where such account is incurred in the election of officers in any city or municipality, it shall be filed in the office of the city clerk or auditor, as the case may be.

§ 8. Must Testify] No person shall be privileged from testifying in relation to anything herein contained, nor from producing any records, books, accounts, or writings mentioned in this act in any proceeding under its provisions, but no such person shall thereafter be prosecuted for any offense concerning which he may have been required to testify, or produce testimony, and the testimony so given and produced shall not be used in the prosecution of any such person in any criminal action whatever except in actions for perjury in giving such testimony.

§ 9. Violation—Penalty] Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars or more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days or more than six months, or by both such fine and imprisonment at the discretion of the court.

§ 10. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 6, 1907.

ELECTRICIANS

CHAPTER 147

(H. B. 48)

RELATING TO ELECTRICIANS

AN ACT Giving Electricians Power to Operate Electric Baths and Batteries for the Treatment of Diseases.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Electric Baths—Who May Operate] Any intelligent person of good moral habits, who understands the principles of electricity may operate electric baths and batteries for the cure of rheumatism and other diseases benefited by such treatment.

Provided, that no charges for such treatment shall exceed two dollars for each hour of work.

§ 2. License—Fee for] All persons who operate electric baths and batteries for profit, as provided in section one of this act, shall pay a license fee of twenty-five dollars into the state treasury for a continuous license, and shall also register their names and place of business with the county auditor in the county they reside.

§ 3. Examination] That the state board of medical examiners shall pass upon the qualifications of such persons as to their knowledge of electricity as applied to the human body. The person applying for such examination shall pay to the state board of medical examiners the sum of \$5 for such examination, and said board shall issue a certificate setting forth such qualifications. Any violation of this act shall constitute a misdemeanor, and any person convicted thereof shall be fined not less than twenty-five (\$25.00) nor more than one hundred (\$100.00) dollars, or confined in the county jail not less than 30 days nor more than six months, or both such fine and imprisonment, as in the discretion of the court.

§ 4. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 26, 1907.

FAIR GROUNDS

CHAPTER 148

(S. B. 273)

ANNULLING PLATS OF STATE FAIR GROUNDS AT HURON

AN ACT Vacating and Annulling Any and All Plats, Including Streets and Alleys, now of Record and Affecting the Property Owned by the State of South Dakota, and Used as a State Fair Ground in the City of Huron, State of South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Plats Annulled] That all plats filed and recorded in the office of the register of deeds within and for the county of Beadle, in the state of South Dakota, platting into blocks, lots, streets and alleys, the following described land now owned by the state of South Dakota, and used and known as the State Fair Ground, to-wit: Out lots "N," "M," "H," and "K" to the town, now city of Huron, block (66) sixty-six in the sixth railway addition to Huron, except lots one (1), two, (2), seven, (7), eight (8), nine (9), ten (10), thirteen (13), fourteen (14); block seventy (70) in the sixth railway addition to Huron, except lots two (2), five (5), six (6), and seven (7), according to the plats of the sixth railway addition and out lots recorded in the office of the register of deeds of Beadle county, South Dakota, are hereby declared to be and are hereby vacated, canceled and annulled so far as said plats affect said above described land by laying said land out into blocks, lots, streets and alleys.

§ 2. Duty of Secretary of State] The secretary of state of the state of South Dakota is hereby authorized and directed to make a certified copy of this act and forward the same to the register of deeds of the county of Beadle for record and the register of deeds in and for said county is directed to record the same in his office, and such recording shall operate to destroy the force and effect of the recording of the plats so vacated to divest all public rights in the streets, alleys, commons and public grounds laid out as described in such plats.

Approved March 7, 1907.

FEES

CHAPTER 149

(S. B. 206)

FIXING THE FEES OF THE OFFICE OF SECRETARY OF STATE

AN ACT to Amend Chapter 141 of the Session Laws of 1903 Entitled "An Act Fixing the Fees of the Office of Secretary of State."

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Fixing Fees] The secretary of state shall charge the following fees for services performed in his office, and shall collect the same in advance:

For examining, filing and recording articles of domestic incorporations, except religious, charitable, benevolent and fraternal associations, and issuing charter for the same, the fees shall be as follows:

Authorized capital stock of \$25,000 or less.....	\$ 10.00
Over \$25,000 and not exceeding \$100,000.....	15.00
Over \$100,000 and not exceeding \$500,000.....	20.00
Over \$500,000 and not exceeding \$1,000,000.....	30.00
Over \$1,000,000 and not exceeding \$1,500,000.....	40.00
Over \$1,500,000 and not exceeding \$2,000,000.....	50.00
Over \$2,000,000 and not exceeding \$2,500,000.....	60.00
Over \$2,500,000 and not exceeding \$3,000,000.....	70.00
Over \$3,000,000 and not exceeding \$3,500,000.....	80.00
Over \$3,500,000 and not exceeding \$4,000,000.....	90.00
Over \$4,000,000 and not exceeding \$4,500,000.....	100.00
Over \$4,500,000 and not exceeding \$5,000,000.....	110.00
Over \$5,000,000	150.00

For examining and filing amended articles of incorporation, or amendments to articles of incorporation, and recording same, ten dollars. Provided, that where the capital stock is increased in amended articles or amendments to articles of incorporation, such a fee shall be charged as shall make together with the fee paid at the time of the incorporation a total sum equal to the fee which would be required under this act in case the corporation had been incorporated for such total increased capitalization.

For examining, filing and recording of articles of incorporation of religious, charitable, benevolent and fraternal associations, three dollars.

For examination and filing of articles of incorporation of foreign corporations, and issuing certificates of authority to do business in this state, except as hereinafter provided ten dollars, and for examining and filing annual statement, except as hereinafter provided, five dollars.

For examining, filing and recording of appointment of resident agent of foreign corporation and issuing certificate of appointment, ten dollars.

For examining and filing annual statement of domestic building and loan associations and issuing certificate of authority, five dollars.

For examining and filing of annual statement of foreign building and loan associations, and issuing certificate of authority, fifty dollars.

For examining and filing annual statement of foreign surety corporations ten dollars.

For filing, recording and safe keeping of any instruments or papers required by law to be filed and recorded in his office, per folio of one hundred words, twenty-five cents.

For making transcript of any record, instrument or paper, on file in his office, per folio of one hundred words, twenty-five cents.

For filing, recording and safe keeping of official bonds, official oath or any other instrument or paper required by law to be filed only, fifty cents; except the oath of office of members of the legislature and legislative officers and employees for which there shall be no fee.

For each commission, requisition, extradition, passport or other document, signed by the governor and attested by the secretary of state, under the great seal of the state, except commissions issued for executive appointments, and making the proper record of the same, three dollars.

For filing appointment and issuing commission for commissioner of deeds, ten dollars.

For filing application, bond and issuing commission of notary public, two dollars and fifty cents.

For official certificate, attestation and impression of the great seal, one dollar.

For each search of the records of his office, fifty cents.

§ 2. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved February 26, 1907.

CHAPTER 150

(H. B. 49)

RELATING TO FEES OF TOWN OFFICERS

AN ACT Entitled an Act to Amend Section 1092 of the Revised Political Code of the State of South Dakota, Relating to Fees of Town Officers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1092 of the Revised Political Code of the state of South Dakota, relating to fees of town officers, be amended to read as follows:

Section 1092. The following town officers are entitled to compensation at the following rates for each day necessarily devoted by them to the service of the town in the duties of their respective offices: The town assessors shall receive for their service three dollars per day while engaged in their respective duties as such assessors; Provided, that compensation received by such assessor shall not exceed the sum of sixty dollars per annum in any one congressional township. The town clerks and supervisors shall receive for their services two dollars and a half per day when attending to business in their town, and three dollars when attending to business out of the town; no town supervisor shall receive more than thirty-five dollars compensation in any one year; Provided, that the town clerk shall be paid fees for the following, and not a per diem: For serving notices of election upon town officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notices required by law, twenty-five cents each; for recording any order or any instrument or writing authorized by law, ten cents for each hundred words; for copying any record or instrument on file in his office and certifying the same, ten cents for each hundred words, to be paid for by the person applying for the same.

§ 2. All acts or parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

Approved February 5, 1907.

FOOD AND DAIRY

CHAPTER 151

(H. B. 292)

PROVIDING FOR A FOOD AND DAIRY COMMISSION

AN ACT to Provide for a State Food and Dairy Commission; to Prevent the Adulteration, Misbranding and Imitation of Foods, Beverages and Condiments, Candies, Drugs and Medicines, Meats and Fish, and to Regulate the Manufacture and Sale Thereof, and of Dairy Products.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Department Created] The food and dairy department of the state of South Dakota is hereby created. Said department shall be in charge of an officer to be known as food and dairy commissioner, who shall be appointed by the governor, by and with the consent of the senate. The term of office of said commissioner shall commence on the first Monday in February of each odd numbered year and shall be for a term of two years, or until his successor shall be appointed and shall qualify. Vacancies occurring in the office for any cause, shall be filled by appointment by the governor for the unexpired term. Said commissioner shall give a bond of \$5,000.00 running to the state. The salary of said commissioner shall be sixteen hundred (\$1,600.00) dollars per annum.

§ 2. Commissioner May Appoint Analyst and Assistants] The food and dairy commissioner shall have the power to appoint a department analyst and such inspectors and office assistance as shall be necessary to carry out the provisions of this act, and to fix their compensation.

§ 3. Must Enforce Laws] It shall be the duty of the said commissioner to enforce all laws that now exist, or that may hereafter be enacted, in this state for the purpose of preventing adulteration, misbranding and imitation of foods, beverages, candies and condiments; to enforce the laws regarding the production, manufacture and sale of dairy products, and to perform such other duties as may be provided by law. He shall make annual report to the governor for each fiscal year ending June 30, showing in detail the work of this department. He shall, also, so far as practicable, either in person or by his agents, encourage, assist and instruct those desiring him to do so, in the organization of creameries or cheese factories, associations and corporations, by lectures, pamphlets or practical demonstration.

He shall also license butter makers and cheese makers, creameries and cheese factories in the manner hereinafter provided. He shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in this state.

§ 4. Duty of Analyst] It shall be the duty of the department analyst to make such chemical analysis and tests as may be required of him by the food and dairy commissioner, and to report the result of such analysis to said commissioner as soon as practicable.

§ 5. Expenses—How Paid] The necessary and actual expenses of the commissioner, analyst, inspectors and other employes of the department shall be paid monthly, upon duly itemized and certified bills, in the manner provided by law.

§ 6. Terms Defined] The term "food" as used herein shall include all articles used for food, drink, flavoring, confectionery or condiment, by man or domestic animals, whether simple, mixed or compound.

§ 7. Food Deemed Adulterated] For the purposes of this act any article of food shall be deemed to be adulterated in either of the following cases:

1. If any substance or substances has or have been mixed with it so as to reduce or lower or injuriously affect its quality, strength or purity.

2. If any substance or substances has or have been substituted wholly or in part for it.

3. If any valuable ingredient or constituent of the article has been wholly or in part abstracted from it.

4. If it contain any added poisonous or other ingredient which may render such article injurious to the health of the person consuming it.

5. If it consists in whole or in part of a diseased, filthy, or decomposed animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

6. If it be mixed, colored, coated, powdered, polished or stained in a manner whereby its true color or character is concealed.

§ 8. Deemed Misbranded] For the purposes of this act an article shall be deemed to be misbranded in either of the following cases:

1. If it be offered for sale under the distinctive name of another article.

2. If it is labeled or branded so as to mislead the purchaser as to the true character of the composition of the article or compound.

3. If the package containing it or the label shall bear any statement, design or device regarding the ingredients, or the substances contained therein, which statement, design or device shall be false or

misleading in any particular, or if the same is falsely branded or labeled as to the state, territory or country in which it is manufactured or produced.

§ 9. Shall Not be Deemed Adulterated or Misbranded—When] Any article of food which does not contain any added poisonous or deleterious ingredients, shall not be deemed to be adulterated or misbranded within the meaning of this act, provided, such article be plainly and conspicuously labeled or branded so as to indicate that it is a mixture, compound, combination, imitation or blend and shows the true character and constituents used therein, providing that this provision shall not be construed to authorize the use of artificial coloring matter or preservatives. And provided further that any article consisting of such a mixture, compound, combination, imitation or blend shall be plainly labeled or branded upon the outside and face of the package or container from or in which said article shall be sold, with the names and proportions of its constituent parts appearing upon the same label, and in as large and prominent characters or type as the trade name of such article.

§ 10. Unlawful to Sell Adulterated or Misbranded Article] It shall be unlawful for any person acting for himself or as the servant or agent of any other person, firm or corporation, to manufacture, sell, offer or expose for sale any article of food which is adulterated or misbranded within the meaning of this act. The possession by any inn keeper, hotel keeper, restaurant keeper, or boarding house keeper of any food or drug which is adulterated or misbranded within the meaning of this act shall be deemed to be the keeping of such food or drug for sale.

§ 11. Name and Location of Manufacturer Must Appear] It shall be unlawful for any person to sell, offer or expose for sale any article of prepared foods, unless the true name of the manufacturer and the location of the factory where such article of food is prepared, is plainly printed or stenciled on the package, box, can carton or other container.

§ 12. Baking Powder—Label] No person shall manufacture, sell, offer or expose for sale any baking powder that contains any deleterious, injurious or unwholesome substance. There shall be securely affixed to every box, can or package containing baking powder, or any mixture or compound intended for use as a baking powder, a light colored label; upon the outside and face of which is distinctly printed in black ink in legible type no smaller than brevier heavy gothic caps the name and residence of the manufacturer, and the words, "This baking powder is composed of the following ingredients, and none other," and immediately after said words shall be printed in the above style type the true and common name of each and all of the ingredients contained in and constituting a component part of such baking powder, mixture or compound.

§ 13. Butter—What to Contain] It shall be unlawful for any person to manufacture, sell, offer or expose for sale as butter any article that is not produced from whole milk or cream or that contains any preservative other than common salt, or that contains less than 82.5 per cent of butter fat. Provided, that nothing in this act shall prohibit the use of harmless additional coloring matter in butter.

§ 14. Candy] It shall be unlawful for any person to manufacture, sell, offer or expose for sale any candy which contains terra alba, barytes, talc, paraffine, chrome yellow or other mineral substances or poisonous colors or flowers, or vinous, malt or spirituous liquors or compound, or narcotic drug, or other ingredients injurious to health.

§ 15. Catsup] It shall be unlawful for any person to manufacture, sell, offer or expose for sale any catsup which contains artificial coloring matter, added starch or other substance used as filler.

§ 16. Cream] It shall be unlawful for any person to sell or offer for sale cream which contains less than eighteen per cent of butter fat, or to which any preservative has been added.

§ 17. Cheese] It shall be unlawful for any person to manufacture, sell, offer or expose for sale any cheese which contains less than fifty per cent of butter fat. Provided, that cheese containing less than fifty per cent of butter fat may be sold if plainly and conspicuously labeled or stenciled "Skim Cheese" or "Imitation Cheese."

§ 18. Cider] It shall be unlawful for any person to manufacture, sell, offer or expose for sale cider not produced wholly from unfermented juice of the apple.

§ 19. Extracts—Flavorings] It shall be unlawful for any person to manufacture, sell, offer or expose for sale as extracts, flavorings which are not made from the natural fruit unless same are labeled "Artificial," provided, that the word artificial must immediately precede the name of the flavoring and in type the same size and style. Such flavorings shall be free from artificial coloring matter.

§ 20. Honey] It shall be unlawful for any person to sell, offer or expose for sale any honey which has not been wholly made by bees from the natural secretions of flowers and plants.

§ 21. Lemon Extract] It shall be unlawful for any person to manufacture, sell, offer or expose for sale any extract of lemon, essence of lemon or spirits of lemon containing less than five per cent of pure oil of lemon dissolved in ethyl alcohol, or to which has been added any artificial coloring matter, other than that derived from lemon peel. Any preparation containing less than five per cent of lemon oil dissolved in ethyl alcohol may be sold if labeled "Imitation Lemon Extract." Provided, that the word "imitation" is in no smaller type than the name of the article and said preparation shall contain no added coloring matter.

§ 22. Extract of Vanilla] It shall be unlawful for any person to manufacture, sell, offer or expose for sale extract of vanilla, essence

of vanilla or spirits of vanilla not made wholly from the extractive matter of vanilla beans dissolved in ethyl alcohol containing not less than forty per cent alcohol by volume and free from all foreign coloring matter. Imitation vanilla flavoring containing any substance or substances other than the extractive matter derived from vanilla beans must be labeled with the name of each ingredient contained therein, in legible type of equal size and style, and must be free from all foreign coloring matter.

§ 23. Lard] It shall be unlawful for any person to manufacture, sell, offer or expose for sale as lard any product not wholly and legitimately and exclusively the rendered fresh fat from slaughtered healthy hogs.

§ 24. Maple Sugar] It shall be unlawful for any person to manufacture, sell, offer or expose for sale as maple sugar any substance not the legitimate and exclusive product of the sap of the maple tree; nor sorghum that is not produced wholly from sorghum cane; nor cane syrup or molasses not wholly produced from sugar cane.

§ 25. Unlawful to Sell Calf for Food Under Four Weeks] It shall be unlawful for any person to slaughter for the purpose of sale as food, expose for sale, or sell, or bring or cause to be brought into any city, town or village, within the state, for food, any calf or carcass of the same or part thereof unless it is in good healthy condition, and was at least four weeks of age at the time of killing.

§ 26. Must be in Healthy Condition Time of Killing] It shall be unlawful for any person to slaughter for the purpose of sale as food, or expose for sale or sell, or bring or cause to be brought into any town or city, town or village, within the state, for food, any animal or carcass of the same or part thereof, unless the same was in good healthy condition at the time of killing.

§ 27. Canned Goods] It shall be unlawful for any person to sell, offer or expose for sale any pickled, prepared, preserved or canned meats in the preparation of which any tainted, diseased or unwholesome meat has been used, or to which has been added any injurious or prohibited preservative or any artificial coloring matter.

§ 28. Milk] It shall be unlawful for any person to sell, or offer for sale, for consumption, as whole milk, or sell, supply, or bring, as whole milk to be manufactured into any article of butter or cheese, to any creamery or cheese factory, any milk diluted with water or containing more than eighty-seven per centum of water fluids, or less than thirteen per centum of milk solids, of which not less than three per centum shall be butter fat, or any impure, unclean, unhealthy, adulterated or unwholesome milk, or cream from the same, or milk from cows within fifteen days before or five days after parturition, or milk to which any preservative has been added.

§ 29. Unlawful to Keep Cows in Unhealthy Condition] It

shall be unlawful for any person to keep cows in a crowded or unhealthy condition for the production of milk for market or for sale or exchange, or to be manufactured into articles of butter or cheese, or feed cows on food that produces impure, unhealthy, diseased or unwholesome milk, nor sell any such milk to any person or persons or deliver milk from diseased cows to any creamery or cheese factory. No person shall manufacture from impure, unhealthy, diseased or unwholesome milk, or cream from the same, any article of butter or cheese.

§ 30. Oleomargarine] It shall be unlawful for any person to manufacture, sell, offer or expose for sale, deliver or have in his possession, with intent to sell or deliver, any oleomargarine which contains methyl orange, butter yellow, annato, analine dye or any other coloring matter. The word oleomargarine, as used in this act, shall be construed to mean any substance not pure butter of not less than eighty per cent of butter fats, which substance is made as a substitute for, in imitation of, or to be used as butter.

§ 31. Spices] It shall be unlawful for any person, by himself, his servant or agent, or as the servant or agent of any other person or corporation to manufacture, sell, offer or expose for sale to the residents of this state any spices, and condiments, either ground or unground, which are adulterated with any foreign substance or substances within the meaning of this article. The term "spices and condiments," as used herein, shall embrace all substances known and recognized in commerce as spices and used as condiments, whether the same be in their natural state or in the form which would result from the grinding, milling, or mixing, or the compounding of the natural product.

§ 32. Vinegar] It shall be unlawful for any person to manufacture, sell or offer for sale any vinegar that does not contain at least four and one-half per cent, by weight, of absolute acetic acid, or which contains any preparation of copper, lead, sulphuric acid or other injurious ingredient or any artificial coloring matter; and in the case of apple or cider vinegar it shall contain not less than two per cent by weight of cider vinegar solids, and be the legitimate product of apple juice. And in the case of malt vinegar it shall contain at least two per cent of natural malt vinegar solids.

§ 33. It shall be unlawful for any person to manufacture, sell, offer or expose for sale any article of food to which has been added formaldehyde, borax, boracic acid, benzoic acid, sulphites or sulphurous acid, salicylic acid, abradol, beta-naphthol, fluorine compounds, saccharine or coal tar dyes.

§ 34. Terms Defined] That the term "drug" as used in this act shall include all articles and preparations recognized in the United States Pharmacopeia or the National Formulary for internal or external use, and any substance or mixture of substances intended to be

used for the cure, mitigation or prevention of disease of either man or domestic animals. The provisions of this act shall not apply to any drugs or medicines in the possession of physicians to be administered directly to patients under their charge.

§ 35. That for the purpose of this act drugs shall be deemed to be adulterated:

First. If when a drug is sold under or by name recognized in the United States Pharmacopeia or National Formulary, it differs from the standard of strength, quality or purity as determined by the test laid down in the United States Pharmacopeia or National Formulary, official at the time of investigation, provided, that no drug defined in the United States Pharmacopeia or National Formulary shall be deemed to be adulterated under this provision, if the standard of strength, quality or purity be plainly stated on the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopeia or National Formulary.

Second. If its strength or purity fall below the professed standard of quality under which it is sold. If it be an imitation of or offered for sale under the name of another article.

Third. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label in eight-point (brevier) caps: Provided, that in case the size of the package will not permit the use of eight-point cap type, the size of the type may be reduced proportionately, of the quantity of any alcohol, morphine, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis-indica, chloral hydrate, caffeine, phenacetine, antipyrine, or acetanilide, or any derivative or preparation on any such substance contained therein.

Fourth. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label in eight-point (brevier) caps: Provided, that in case the size of the package will not permit the use of eight-point cap type, the size of the type may be reduced proportionately, of the quality or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis-indica, chloral hydrate, caffeine, phenacetine, antipyrine, or acetanilide, or any derivative or preparation of any such substances contained therein, provided, that nothing in this paragraph shall be construed to apply to the dispensing of prescriptions written by regularly licensed physicians, veterinary surgeons and dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopeia and the National For-

mulary, and which are sold under the name by which they are so recognized.

Fifth. If in package form, and the contents are stated in terms of weight and measure, they are not plainly and correctly stated on the outside of the package, or if the package containing it or its label shall bear any statement, design or device, which statement, design, or device shall be false or misleading in any particular, provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In case of mixtures or compounds which may be, or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with the name of the manufacturer and a statement of the place where said article has been manufactured or produced.

Second. That any article of food, medicine, drugs, condiment or beverage shall be deemed misbranded if it shall bear a geographical name which is misleading or which is not the true name of the place where the article shall have been grown, manufactured or produced, and prepared medicines which shall not bear a qualitative statement of what it is composed.

Third. In the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale; provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: And provided further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

§ 36. Violation—Penalty] Any person violating any of the provisions of the preceding section of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days or by both such fine and imprisonment for each offense.

The word "person" as used in this act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent, or other person acting for or employ-

ed by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society or association as well as that of the person.

§ 37. Licenses Must be Procured] Every cream and cheese factory proprietor or corporation shall on the first day of April each year, or within thirty days thereafter, be licensed by the food and dairy commissioner, to manufacture from pure milk or cream, butter or cheese, or both, and shall pay to said commissioner the sum of one dollar for each and every factory owned and operated by said individual or corporation. No license shall be sold or transferred. Each license shall record the name of the owner or corporation, place of business, the location of the factory or skimming station and the number of the same. Each licensee shall before engaging in the manufacture of butter or cheese, cause the number of the license to be placed conspicuously on the wall on the inside of said factory or skimming station, and he or they shall report to the said commissioner, on blanks furnished by said commissioner, the names and post-office address of all the officers of said factory, including the butter and cheese maker. Any change in the management or butter maker, or cheese maker, during the term of said license shall be properly reported to the said commissioner.

§ 38. Reports] Every manager, secretary, superintendent, or person in charge of any creamery, cheese factory, or renovating or process butter factory in this state shall make a monthly report to the food and dairy commissioner, not later than the last day of each month, of the product of the factory and such other information as the commissioner may require for the preceding month, ending on the last day thereof. Blanks upon which to make such reports shall be procured from the said commissioner.

§ 39. Cheese Factories—Labels] Every person who shall, at any cheese factory in this state, manufacture cheese, and shall fail, at the factory where it was made, to distinctly and durably stamp on the bandage of every such cheese and on the box containing the same, in full-faced capital letters, the location of the factory and the grade of the cheese: "South Dakota Full Cream Cheese," "Skim" or "Imitation" as herein defined, shall be deemed guilty of a misdemeanor and punished as hereinafter provided. Brands and stencils for stamping shall be procured of the food and dairy commissioner. The food and dairy commissioner is hereby authorized and directed to issue to each cheese factory, upon proper application therefor, uniform stencils or brands, to be used as provided in this section.

§ 40. Commissioner Must Furnish Stencils] The food and dairy commissioner shall issue at cost stencils and brands provided for in section 39 of this article, upon proper application therefor, and shall keep a book in his office, which book shall contain a record of the

number of each brand issued and the names and location of the factories receiving the same, and no factory other than the one to which such brand or stencil is issued shall use the same.

§ 41. Creamery—License] Any person desiring to engage in the occupation of butter maker or cheese maker, in any creamery or cheese factory in the state shall make application to and procure from the food and dairy commissioner a license to engage in such occupation. Such license shall be issued upon satisfactory examination as to the qualifications of the applicant. If the applicant furnished to the commissioner satisfactory recommendations from the manager or board of directors of the factory in which he may have been employed of his ability as a butter maker or cheese maker, such recommendation may be accepted in lieu of an examination.

§ 42. Test] It shall be a misdemeanor for the owner, manager, agent or any employee of any creamery or cheese factory to manipulate or underread the Babcock test or any other contrivance used for determining the quality or value of milk.

§ 43. Any adulterated foods, or imitation butter or cheese shipped into this state, not labeled as provided by law in this state, may be seized by the food and dairy commissioner and confiscated by him.

§ 44. Violation—Penalty] Any person violating any of the provisions of sections thirty-seven, thirty-eight, thirty-nine, forty-one or forty-two of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars and by imprisonment in the county jail for not less than ten nor more than thirty days, or by both such fine and imprisonment.

§ 45. Resistance—Penalty] Whoever hinders, or obstructs or in any way interferes with the food and dairy commissioner, or his employees, deputies or inspectors in the performance of his or their duty shall be punished by a fine of fifty dollars (\$50.00) for the first offense, and one hundred dollars (\$100.00) for each subsequent offense and shall stand committed to the county jail until such fine is paid as provided by law.

§ 46. Repeal] Article eight (8) and article ten (10) of chapter twenty-seven (27) of the Revised Political Code, and all other acts and parts of acts in conflict with this act are hereby repealed.

Approved March 11, 1907.

CHAPTER 152

(H. B. 223)

RELATING TO CREAM AND THE MANUFACTURE OF BUTTER

AN ACT to Define and Grade Cream and to Regulate and Prevent the Manufacture of Decomposed or Deleterious Cream Into Creamery Butter and to Prevent Fraud in the Manufacture of Butter.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Term Defined] That the word "cream" is hereby defined and construed to mean the pure butter fat, casein and milk sugar, taken from whole milk by gravity or separator process, which shall not contain less than (18) eighteen per cent of pure butter fat.

It shall be lawful to sell or offer for sale any cream which shall contain (18%) eighteen per centum of pure butter fat, which has been obtained from pure, whole milk and kept in a clean and sanitary place or vessel which has been obtained by either the gravity or separator process. Provided, That cream which is in a clean, wholesome condition procured from the milk of healthy cows kept under clean sanitary conditions which shall contain (25) twenty-five or more per centum of butter fat, and shall not contain to exceed two-tenths per centum of lactic acid shall be designated number one cream.

§ 2. Number Two Cream] Cream which is clean and wholesome, procured under good sanitary conditions, containing (25) twenty-five or more per centum of pure butter fat and not to exceed four-tenths per centum of lactic acid, shall be designated number two cream.

§ 3. Number Three] Cream which is clean and wholesome, procured under good sanitary conditions, containing (25) twenty-five or more per centum of pure butter fat, and not to exceed six-tenths per centum of lactic acid shall be designated as number three cream.

All cream which contains more than (7) seven-tenths per centum of lactic acid or which has been procured from unhealthy cows, or cows which have not been fed wholesome food, or kept in reasonably clean or sanitary quarters shall be designated rejected, unwholesome cream and shall not be received at any creamery or manufactory of dairy products and mixed with other better grades of cream and mingled with the regular products of said creamery or manufactory of dairy products within this state. But shall be kept separate and the products made from such cream shall be kept separate and apart from the regular output of said manufactory of dairy products or creamery, and shall be branded on the outside of every package in plain letters not less than one inch in size "Renovated." For the purposes of this act the several grades of cream mentioned herein shall be determined by the well-known chemical standard alkaline tests now in use in the creameries and chemical laboratories everywhere.

§ 4. Violation—Penalty] Any person or persons who shall be found guilty of violating any of the provisions of this act shall be fined not less than (\$10.00) ten dollars, nor more than (\$50.00) fifty dollars, or by being confined in the county jail for not more than (60) sixty days, or by fine or imprisonment or both fine and imprisonment in the discretion of the court for each and every offense.

§ 5. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 153

(H. B. 165)

REGULATING THE SALE OF STOCK FOOD

AN ACT Entitled an Act to Regulate the Sale of Stock Food Within the State of South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. It will be unlawful for any person or persons to manufacture, sell or offer for sale, any stock food within the state of South Dakota, in any box, can or other package that contains any deleterious or injurious substance.

§ 2. Label] There shall be securely affixed to every box, can or package containing stock food or any mixture or compound intended for use as stock food, a red label upon the outside, on the face of which is distinctly printed in black ink, in legible type, the name and residence of the manufacturer and the words, "This stock food is composed of the following ingredients and none other," under which shall be printed the common name of each and all of the ingredients of which such stock food is composed.

All stock food offered for sale in the state of South Dakota shall be subject to the inspection of the dairy and food commissioner or his agent, deputies or inspector.

§ 3. Violation—Penalty] Any prson or persons violating any of the provisions of this law shall be guilty of misdemeanor, and on conviction thereof shall pay a fine of not less than ten, nor more than one hundred dollars.

Approved March 6, 1907.

FOREST RESERVE

CHAPTER 154

(H. B. 234)

RELATING TO SPECIAL FOREST RESERVE FUND

AN ACT Entitled an Act Prescribing the Manner of Distributing the Funds Received by the State of South Dakota from the Forest Service of the United States, to Counties in which Forest Reserves are Situated.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. How Distributed] That all moneys now in the hands of the treasurer of the state, in the special forest reserve fund, received from the forest service of the United States under the agricultural act, approved June 30, 1906, which moneys are a percentage of the gross receipts from the Black Hills Forest Reserve for the fiscal year ending June 30, 1906, together with all subsequent receipts from said Black Hills Forest Reserve, shall be distributed annually to the counties of Lawrence, Meade, Pennington, and Custer, for the benefit of the public roads and public schools of said counties, in proportion to the area of the said Black Hills Forest Reserve in each county and all moneys hereafter received by said state treasurer as a percentage of the gross receipts from the Cave Hills, Short Pine and Slim Butte Forest Reserves shall be annually turned over to Butte county for the benefit of the public roads and public schools of said county. Provided that there shall not be paid to any county an amount equal to more than forty per centum of the total income of such county, from all sources.

§ 2. Duty of State Auditor] The state auditor shall annually, after the receipt of said funds, determine the amount due each county and forward a warrant for the same to the treasurer of each county entitled to its proportion of said fund which annual amount is to be used, nine-tenths for the improvement of public roads and one-tenth for the public schools.

§ 3. Emergency] There being no law on this subject, an emergency is hereby declared to exist and this act shall be in effect from and after its passage and approval.

Approved March 2, 1907.

GAMBLING

CHAPTER 155

(H. B. 264)

RELATING TO GAMBLING

AN ACT Relating to Gambling.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. May Recover Money or Property] That if any person shall lose any money or property of any value whatsoever at any game whatsoever, such person may recover the money or property so lost from either or all of the other persons playing at the game at which said property or money was lost, or from the person or persons with whom said bet or wager was had, or from the proprietor of the place where the game was played. And the proprietor of the place where the game is played and all persons engaged in the game may be joined as parties in the action.

§ 2. Common Gambler] Whoever, for the purpose of gambling with cards or otherwise, travels about from place to place, or frequents any place where gambling is permitted or engaged in gambling for a livelihood is deemed a common gambler and guilty of a misdemeanor and upon conviction therefor shall be fined not more than \$100.00 to which may be added imprisonment in the county jail for not more than thirty days.

§ 3. Promises, Agreements, Etc.—Void] All promises, agreements, notes, bills, bonds or other contracts made and entered into, where the whole or any part of the consideration of such promise or agreement or other securities shall be for money or other valuable thing whatsoever, won or lost, laid or staked or betted at or upon any game of any kind or under any name or kind whatsoever, or by any means or for the repayment of money or other thing of value, lent or advanced, at the time and for the purpose of any game, play, bet or wager, or being laid, staked or betted or wagered thereon shall be absolutely void.

§ 4. May Recover Within Six Months] Any one who by betting on any game shall lose to any one any money or valuable thing, may recover the same with costs of suit within six months following the date of such loss.

Provided, further, that in case the losing party fails to sue with-

in the time prescribed, it shall be the duty of the prosecuting attorney, upon information being given to him of such loss, to bring suit to recover the money for the benefit of the wife or minor children, or in case there be no wife or minor children, for the benefit of the common schools, any time within six years from the time the money was lost.

§ 5. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 156

(H. B. 272)

RELATING TO MONEY TO BE RECOVERED IN CIVIL ACTIONS WON AT GAME OF CHANCE

AN ACT Entitled an Act to Amend Section 398, Revised Penal Code of 1903, Relating to Money to be Recovered in Civil Action Won at Game of Chance.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 398 of the Revised Penal Code of 1903 be amended to read as follows, to-wit:

Section 398. Every person who exacts or receives from another, directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro, or any other game of chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil action, by the superintendent of schools of the county in which the offense was committed, for the benefit of common schools in said county.

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 7, 1907.

GAME

CHAPTER 157

(S. B. 244)

RELATING TO THE PROTECTION OF GAME

AN ACT Entitled an Act to Protect Mongolian Pheasants, English Pheasants, Golden Pheasants, Reeves Pheasants, Japanese Pheasants, Temmicks Pheasants, Trapagan Pheasants and Ring-Neck or China Torquatus Pheasants, Making it Unlawful to Kill, Hunt, Trap or Pursue the Same, or to Destroy the Nests or Eggs of the Same and Providing Penalties Therefor.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Unlawful to Kill Certain Birds] It shall be unlawful to kill hunt, trap in any manner, or pursue and Mongolian pheasant, English pheasant, golden pheasant, reeves pheasant, Japanese pheasant, temmicks pheasant, trapagan pheasant, ring-neck or China torquatus pheasant, or attempt to kill, hunt, trap or pursue the same at any time prior to January 1st, A. D. 1915.

§ 2. Violation—Penalty] Any person violating any of the provisions of section 1 of this act, shall be guilty of a misdemeanor and upon conviction hereof, shall be fined not less than \$25.00 or more than \$100.00 for each any every offense, and in default of payment of such fine, be imprisoned in the county jail for a period not exceeding thirty days. Each and every pheasant killed, hunted, trapped or pursued shall constitute a separate offense.

§ 3. Unlawful to Destroy Nests] It shall be unlawful to in any manner destroy any nests, or egg or eggs of any Mongolian pheasant, English pheasant, golden pheasant, reeves pheasant, Japanese pheasant, temmicks pheasant, trapagan pheasant, ring-neck or China torquatus pheasant.

§ 4. Penalty] Any person violating the provisions of section 3 of this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by fine of not less than \$10.00, nor more than \$100.00 for each and every offense, and in default of payment of such fine, shall be imprisoned in the county jail for a period of not exceeding thirty days.

§ 5. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 6. Emergency] Whereas, an emergency exists and is hereby

declared to exist, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1907.

CHAPTER 158

(H. B. 296)

RELATING TO THE PROTECTION OF QUAIL

AN ACT Entitled an Act for the Protection and Preservation of Quail.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Unlawful to Kill] It shall be unlawful for any person or persons, to, within this state, shoot, kill, catch or in any manner capture or destroy any quail before the first day of October, 1912, or to at any time hereafter take, molest or destroy the nest or eggs of said bird.

§ 2. Violation—Penalty] Any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before a justice of the peace of the county, is punishable by a fine of not less than ten dollars nor more than one hundred dollars for each offense.

§ 3. Repeal] All acts and parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

Approved March 7, 1907.

CHAPTER 159

(H. B. 142)

PROVIDING FOR THE PROTECTION OF BIRDS AND THEIR NESTS AND EGGS

AN ACT for the Protection of Birds and Their Nests and Eggs.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Birds Declared Property of State] That all wild birds, both resident and migratory in this state, shall be and are hereby declared to be the property of the state.

§ 2. Unlawful to Kill Certain Birds] That no person shall, within the state of South Dakota, kill or catch or have in his or her possession, living or dead, any wild bird other than a game bird, or

purchase, offer or expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this act. No part of the plumage, skin or body of any bird protected by this section shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state. For the purposes of this act the following only shall be considered game birds:

The anatidae, commonly known as swans, geese, brants and river and sea ducks; the rallidae, commonly known as rails, coots, mud hens and gallinules; the limicolae, commonly known as shore birds, plovers, surf birds, snipe, woodcock, sandpipers, tattlers, and curlews; the gallinae, commonly known as wild turkeys, grouse, prairie chickens, pheasants, partridges and quails. All other species of wild birds, either resident or migratory, shall be considered non-game birds.

§ 3. Nests and Eggs] That no person shall, within the state of South Dakota, take or needlessly destroy or attempt to take or destroy the nest or the eggs of any wild bird other than a game bird, or have such nest or eggs in his or her possession, except as permitted by this act.

§ 4. Unlawful to Ship] That no person or persons or any corporation, acting as a common carrier, its officers, agents or servants, shall ship, carry, take or transport, either within or beyond the confines of the state, any resident or migratory wild non-game bird, except as permitted by this act.

§ 5. Violation—Penalty] That any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and shall be liable to a fine of five dollars for each offense, and an additional fine of five dollars for each bird, living or dead, or part of bird, or nest, or set of eggs, or part thereof, possessed in violation of this act, or to imprisonment for thirty days, or both, at the discretion of the court.

§ 6. Not Applicable in Certain Cases] That sections 2, 3, 4 and 5 of this act shall not apply to any person holding a certificate giving the right to take birds, their nests or eggs for scientific purposes only as provided for in section 7 of this act.

§ 7. Certificate by Secretary of State] That certificates may be granted by the secretary of state to any properly accredited person of the age of fifteen years or upward, permitting the holder thereof to collect birds, their nests or eggs for scientific purposes only. The applicant for the same must present to said officer written testimonials from two well-known ornithologists, who must be residents of South Dakota, certifying to the good character and fitness of said applicant to be entrusted with such privilege; must pay said officer one dollar to defray the necessary expenses attending the granting of such certificate. On proof that the holder of such certificate has killed any bird or taken the nest or eggs of any bird for other than strict-

ly scientific purposes his certificate shall become void, and he shall be liable to a fine of one hundred dollars or imprisonment of thirty days, or both, at the discretion of the court.

§ 8. Expiration of Certificate] That the certificates authorized by section 7 of this act shall expire on the 31st day of December of the year issued and shall not be transferable.

§ 9. Certain Birds not Protected] That the English or European house sparrow, black birds, great horned owl, sharp skinned hawk and Cooper's hawk are not included among the birds protected by this act.

§ 10. That nothing in this act shall prevent a citizen of South Dakota from taking or keeping any wild non-game bird in a cage as a domestic pet, provided that such bird shall not be sold, exchanged, or offered for sale or exchange, or transported out of the state.

§ 11. Repeal] All acts or parts of acts heretofore passed inconsistent with or contrary to the provisions of this act are hereby repealed.

Approved February 26, 1907.

GAS AND WATER

CHAPTER 160

(S. B. 178)

RELATING TO THE USE OF WATER AND GAS

AN ACT to Punish Persons Unlawfully Obtaining and Using Gas and Water.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Unlawful Use of Gas or Water] That any person or persons who shall without permission or authority connect or cause to be connected by a pipe or pipes or any other device with any main or service pipe of any gas or water company or municipal corporation for the purpose of obtaining gas or water for light, heat or power, or any other purpose whatsoever, or whoever without permission or authority, connect or cause to be connected, by a pipe, or pipes or other device, any meter or meters erected or set up for the purpose of registering or recording the amount of gas or water supplied to any consumer by any gas or water company or municipal corporation within this state, or who with intent to defraud shall

change, disconnect, or shut the pipe or pipes leading to or from any such meter or by any device, appliance or means whatsoever tamper with any such meter in such a manner that such meter or meters will not measure or record the full amount of gas or water supplied to any consumer, shall be guilty of a misdemeanor and on conviction thereof, shall be punished by a fine in a sum not exceeding \$100, or imprisoned in the county jail for a term not exceeding sixty days, or by both such fine and imprisonment.

§ 2. May Recover Damages] Nothing contained in this act shall be deemed to affect the right of any such company or corporation furnishing gas or water, to recover by an action at law, damages for any injury done by such unlawful connection for the loss of gas or water.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 1, 1907.

HIGHWAYS

CHAPTER 161

(H. B. 147)

CONVEYING REAL ESTATE FOR HIGHWAY PURPOSES

AN ACT Providing for the Granting, Conveying and Dedicating Certain Real Estate by the State of South Dakota, to the Public, for Highway Purposes.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Land Conveyed] The state of South Dakota, for the purpose of opening, laying out and establishing a highway over and through its twenty acres of land in the city of Springfield, Bon Homme county, in said state, belonging to and used by the Springfield State Normal School, does hereby grant, convey and dedicate to the public, for highway purposes, the following real estate, to-wit: A strip thirty-three (33) feet wide along the west end and north side of said normal school land. Said twenty acres of land is described and known as the north 42 rods and 11 feet of the southwest quarter of the northeast quarter of section 23, in township 93, north of range 60, less 88 feet, off the east side dedicated to the public for street purposes, all within the limits of the city of Springfield, Bon Homme county, South Dakota.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] An emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 25, 1907.

CHAPTER 162

(H. B. 294)

RELATING TO HIGHWAY BRIDGES

AN ACT Entitled an Act Relating to the Control, Supervision, Construction and Repairs of Highways and Bridges.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Question May be Submitted] Five per cent of the resident freeholders of any township in this state may file a petition with the town clerk, at least twenty days before the annual town meeting, asking that the question whether the requirements of highway labor shall be discontinued in said township be submitted to a vote in the township. It shall thereupon be the duty of the town clerk to give notice of the submission of the said question to a vote, in the manner that is provided for the annual town meeting. If a majority of the voters at said election shall declare in favor of retaining highway labor, the provisions of this chapter shall not apply to said township; if the majority of the voters at said election declare in favor of discontinuing highway labor the provisions of this chapter shall govern until after, by petition, notice and a majority vote of the township in like manner as herein provided, the township shall declare in favor of returning to the requirement of highway labor.

§ 2. Road Overseer Discontinued—Duty of Supervisor] Under this chapter, the office of road overseer shall be discontinued and the township supervisors shall perform, or require to be performed under their direction, all the duties heretofore required by law to be performed by overseers of highways with reference to repairing and keeping in order the roads within the town, and the supervisors shall be authorized to employ such persons as they deem necessary to do such work. The township supervisors shall receive for their services, such sums as are now allowed by law for attending to business in their town.

§ 3. Poll Tax] Every male inhabitant being above twenty-one years and under the age of fifty years, excepting paupers, idiots, lunatics and such others as are exempt by law, shall be assessed one

ollar and fifty cents in each year for road purposes. The supervisors of each town shall at the regular meeting on the last Tuesday of March, make a list of the names of all the inhabitants in the town who are liable to such assessment for road purposes, which list shall be signed by the supervisors and deposited with the town clerk to be filed in his office. They shall proceed to ascertain, estimate and assess such tax upon real and personal property as is now authorized by law and in the same manner.

§ 4. Notice to County Auditor of Tax Levy] All assessments upon persons and property for road purposes shall be paid in cash and it shall be the duty of the township clerk, immediately after the township board of supervisors have made a levy of taxes for road purposes, or within three days thereafter, to notify the county auditor of the amount levied, who shall, enter the same upon the county tax list to be collected by the county treasurer in the same manner as other township taxes and as county taxes are collected. No assessment of highway labor shall be made under the provisions of this act.

§ 5. Road Tax—How Expended] All sums heretofore collected by commutation of road labor and remaining unexpended, and all sums levied and collected as road tax under the provisions of this act shall be expended for the building, repairing and maintenance of the roads within the township under the direction of the supervisors thereof, and the supervisors are authorized to employ such persons as they deem necessary to do such work.

§ 6. Contract—How Made] No contract for such work requiring the expenditure by the township of a sum to exceed fifty dollars shall be made by the supervisors except as herein provided. The supervisors shall cause an advertisement for bids for such work to be printed in some newspaper published in the county, two times, once each week, the first publication to be made at least ten days prior to the opening of the bids, and may give such other notice as the board may deem advisable. Such advertisement shall state where the plans and specifications of such work may be examined, the time allowed for the completion of such work, when the bids will be opened and passed upon by the board, which meeting of the board must be a regular meeting of the board or a special meeting, duly called, and the lowest responsible bid must in all cases be accepted and the contract for such work shall be so conditioned that not more than one-half of the payment for the same shall be made until the contract shall be executed and the work completed to the satisfaction and acceptance of the board. Such board may further require a bond to accompany each bid, conditioned that the bidder will enter into a contract with approved security for the performance of the work in accordance with the plans and specifications in case his bid is accepted. Provided further that the board may reject any or all bids.

§ 7. All provisions of the Political Code of 1903, relating to the

public highways, road duties of township supervisors and road tax not in conflict with this act are continued in force.

§ 8. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1907.

HORSES

CHAPTER 163

(H. B. 253)

RELATING TO THE SHIPMENT OF HORSES

AN ACT Entitled an Act Supplementary to Chapter 20, of the Laws of 1905, Relating to the Shipment of Horses.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Must Notify Sheriff] It shall be the duty of every horse owner in the state of South Dakota, intending to ship branded horses, to notify the sheriff of the county wherein is located the railroad station from which it is proposed to make such shipment, which station may be the most convenient one to the range upon which such branded horses have been kept, in ample time to enable the inspector of horses to properly inspect the same, which notice may be either oral or in writing, but must state the time and place of the proposed shipment, and any person, firm or corporation, that shall in any manner ship, take or drive any branded horses out of the state, without having a proper certificate of inspection thereof, or who shall make, forge or use any false or fraudulent certificate of inspection, shall be deemed guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

§ 2. Duty of Auditor] The county auditor of each county shall, on or before the tenth day of each month, cause to be published in the official newspapers of his county a report for the preceding month showing the number of horses shipped from the county, by whom and to where shipped, when and from where, together with a description of the brands thereon which report shall be published once in each official paper in the same manner as is now provided

for the publication of commissioners proceedings, and the same publication fees shall be allowed and paid out of the county general fund as is allowed by law for the publication of commissioners proceedings.

§ 3. All acts or parts of acts in conflict with this act, are hereby repealed.

Note by the Secretary of State: The foregoing act, having been presented to the governor of this state for his approval, and not having been returned by him to the house of the legislature in which it originated, or to the secretary of state with his objections, within the time prescribed by the constitution has become a law without his approval.

D. D. WIPF,
Secretary of State.

HORTICULTURAL SOCIETY

CHAPTER 164

(S. B. 271)

RELATING TO THE STATE HORTICULTURAL SOCIETY

AN ACT to Amend Section 8, Chapter 215 of the Session Laws of 1903 Relating to the State Horticultural Society.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 8 chapter 215 of the Session Laws of 1903 is hereby amended to read as follows:

Section 8. "Reports to be Printed] The governor annually shall cause to be printed and substantially bound in cloth, five hundred copies and fifteen hundred copies bound in paper of the reports of this society in the same manner in which other reports of state officers and state institutions are printed and bound, and shall cause them to be distributed as follows: One copy to each member of the legislature, the constitutional officers of the state, state institutions and libraries, and the balance to be turned over to the secretary of the society to be distributed among the members of the society and for exchange with like societies in other states."

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 7, 1907.

HOTELS

CHAPTER 165

(H. B. 18)

RELATING TO HOTELS

AN ACT Entitled an Act Defining and Relating to Hotels, Inns and Public Lodging Houses, Prescribing Rules and Regulations for Their Operation as to Insure the Safety, Health and Comfort of Their Guests Through Fire Protection and Sanitary Measures; Providing for the Appointment of Inspectors of Hotels, Prescribing Their Duties and Qualifications and Fixing Their Compensation; Providing for the Raising and Expenditure of a "Hotel Inspection Fund;" and Prescribing Penalties and Fixing Punishment for the Violation of the Provisions Thereof.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Hotel Defined] Every building or structure kept, used or maintained as, or advertised as, or held out to the public to be an inn, hotel, or public lodging house or place where sleeping accommodations are furnished for hire to transient guests, whether with or without meals in which ten (10) or more rooms are used for the accommodation of such guests shall for the purpose of this act be defined to be a hotel and wherever the word hotel shall occur in this act it shall be construed to mean every such structure as is described in this section.

§ 2. Fire Escapes] Every hotel that is more than three stories high shall be provided with a hall on each floor extending from one outside wall to the other and at each end of such hall shall be equipped with an iron fire escape on the outside of the building, connecting on each floor above the first, with at least two openings, which shall be well fastened and secured, with landings not less than six feet in length and three in width, guarded by an iron railing not less than thirty inches in height. Such landings shall be connected by iron stairs not less than two feet wide and with steps of not less than six inches tread, placed at an angle of not more than forty-five degrees and protected by a well secured hand rail on both sides and reaching to within twelve feet of the ground with a drop ladder twelve inches wide reaching from the lower platform to the ground. Such fire escapes shall be sufficient if a perpendicular iron ladder shall be used instead of the stairs provided such iron ladder is placed at the extreme outside of the platforms and at least three feet away from the wall of the building and provided said ladder is equipped with round iron rounds not more than fifteen inches apart.

The way of egress to such fire escape shall at all times be kept free and clear of all obstruction of any and every nature. Storm windows and storm doors shall be considered an obstruction for the purpose of this act, and such way of egress shall at all times be kept unlocked. There shall be posted and maintained in a conspicuous place in each hall and each guest's room except the halls and rooms on the ground floor of such hotel, a printed notice in characters not less than two inches high, calling attention to and directing the way to such fire escape.

§ 3. Fire Extinguisher—Stand-Pipes] Each and every hotel shall be provided with at least one efficient chemical fire extinguisher for every twenty-five hundred square feet or less of floor area which such extinguisher or extinguishers shall be placed in a convenient location in a public hallway outside of the sleeping rooms and shall always be in condition for use; or in lieu thereof, such hotel shall be equipped with a one and one-fourth inch stand-pipe with hose connection and hose of sufficient length always attached in such hallway, which stand-pipe shall be supplied with a sufficient pressure of water.

§ 4. Ropes] Every hotel shall provide in every bed room or sleeping apartment above the first floor a manila rope at least five-eighths of an inch in diameter and of sufficient length to reach the ground, with knots or loops not more than fifteen inches apart, and of sufficient strength to sustain a weight and strain of at least five hundred pounds. Such rope shall be securely fastened to the joists or studding of the building as near the window as practicable and shall be kept coiled in plain sight at all times nor shall such rope be covered by curtains or other obstructions. Every such hotel shall provide and maintain in a conspicuous place in every bed room or sleeping apartment above the ground floor a printed notice calling attention to such rope and giving directions for its use.

§ 5. Elevators] Every hotel which is equipped with a passenger or freight elevator shall cause the shaft way of such elevator or elevators to be enclosed with an iron sheathing as nearly air tight as is practicable and shall provide tight doors to such shaftway, or in lieu of such sheathing shall provide automatic floor traps at each floor in such shaft; either of which appliances to be built in the most approved manner for the prevention of spread of fire by means of said shaft.

§ 6. Drainage] Every hotel located in any town or city having a sewer system shall be well drained, constructed and plumbed according to established sanitary principles; and all hotels shall be kept clean and in a sanitary condition and free from effluvia arising from any sewer, drain, privy, or other source within the control of the owner, manager, agent or other person in charge; shall be provided with water closets or privies properly screened for the separate use of males and females, which water closets or privies shall be disin-

fects as often as may be necessary to keep them at all times in a sanitary condition.

§ 7. Violation—Penalty] Every owner, manager, agent, or person in charge of a hotel who shall fail to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) or shall be imprisoned in the county jail for not less than ten days nor more than three months or both, and every day after sufficient notice has been given that such hotel is carried on in violation of this act shall constitute a separate offense.

§ 8. Governor to Appoint Inspector] For the purpose of carrying into effect the provisions of this act the governor, by and with the advice and consent of the senate, shall appoint an inspector of hotels who shall hold office until the first Monday in March of the odd-numbered year next after his appointment and until his successor qualifies; but the governor may remove such inspector and appoint another in his place whenever he shall deem it necessary for the public good. Said inspector shall receive as his compensation the fees from the office as herein provided. He shall give bond to the state in the penal sum of five thousand dollars conditioned for the faithful performance of his official duties, to be approved by the secretary of state.

§ 9. Deputies] Such inspector, may, with the consent of the governor, appoint, and at pleasure remove, such deputies as may be deemed necessary, who shall assist under his direction in performing the duties imposed by this act. They shall each give bond to the state in the sum of two thousand dollars with like conditions as that of the inspector, to be approved by the secretary of state. They shall receive such compensation, not exceeding one hundred dollars per month as the inspector may prescribe, provided that the pay of no deputy for any month shall exceed the amount of fees collected and remitted by him during the preceding month.

§ 10. Duty of Inspector] It shall be the duty of the inspector and his deputies to see that all of the provisions of this act are complied with and said inspector, or the deputy, shall personally inspect once in each year, every hotel as defined in this act.

Said inspector and his deputies are hereby granted police power to enter any hotel at reasonable hours to determine whether the provisions of this act are being complied with. The inspector shall purchase and keep a complete set of books and furnish all necessary blanks for public use and inspection showing the conditions of each hotel so inspected together with the name or names of the owners, proprietors and managers thereof, and showing its sanitary condition, the number and condition of its fire escapes and any other information for the betterment of the public service.

§ 11. If the inspector shall find after examination of any hotel

that this law has been fully complied with, and the inspection fee has been paid to the inspector, he shall issue a certificate to that effect to the person operating the same, and said certificate shall be kept posted up in a conspicuous place in said inspected building.

§ 12. False Certificates—Penalty] Any inspector or deputy who shall wilfully certify falsely regarding any building inspected by him, and who shall issue a certificate to any person operating any hotel when such person has not complied with the provisions of this act, shall, on conviction thereof, be fined not less than fifty dollars, nor to exceed five hundred dollars, and may be imprisoned not to exceed one year in the state prison, or both, at the discretion of the court, and upon conviction shall be forever disqualified to hold said office.

§ 13. Unlawful to Hinder or Obstruct Inspector] Any owner, manager, agent or person in charge of a hotel who shall obstruct or hinder an inspector in the proper discharge of his duties under this act, or who shall refuse or neglect to pay the fee for inspection prescribed herein shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) or shall be imprisoned in the county jail for not less than ten days, nor more than three months or both.

§ 14. Arrests May be Made] It shall be the duty of the inspector, upon ascertaining by inspection or otherwise that, after thirty days from the date this act takes effect any hotel is being carried on contrary to its provisions, to make complaint and cause the arrest of the person so violating the same; and it shall be the duty of the county attorney in such case to prepare all necessary papers and conduct such prosecutions.

§ 15. Fee] Every hotel containing twenty (20) rooms or less, for the accommodation of the public, shall pay to the inspector an inspection fee of five dollars (\$5.00) when inspected under the provisions of this act, and every hotel containing more than twenty (20) rooms for the accommodation of the public shall pay to the inspector an inspection fee of ten dollars (\$10.00), when inspected under the terms of this act. But such inspector shall not inspect any hotel, inn or public lodging house oftener than once a year, unless upon a verified complaint setting forth facts showing that such hotel is in unsanitary condition, and such fees shall be paid in full compensation for services rendered by such inspector. Provided, that all fees collected for such inspection in excess of fifteen hundred dollars and expenses of said inspector for the term of one year shall be turned into the state treasury and held as a hotel inspection fund. Such fees shall be collected by the inspector at the time of inspection and if not paid on demand the inspector or deputy may sue therefor in his own name for the use of the state, and in such case the court shall allow and enter as a part of the judgment against the defendant all the costs of such

action, including a reasonable fee for any attorney necessarily employed in such action by the inspector.

§ 16. Statement] At the end of each month the inspector shall file with the state auditor a verified statement of the amounts collected and the sources thereof.

§ 17. Repeal] All acts and parts of acts inconsistent herewith are hereby repealed.

Approved February 25, 1907.

INITIATIVE AND REFERENDUM

CHAPTER 166

(H. B. 137)

RELATING TO THE INITIATIVE AND REFERENDUM

AN ACT to Amend Article Three (3) of Chapter (2) of the Political Code Providing for the Initiative and Referendum.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That article three (3) of chapter two (2) of the Political Code be and the same is hereby amended by adding thereto the following, which shall be known as section twenty-eight (28):

§ 28. The petitions herein provided for shall be liberally construed so that the real intention of the petitioners may not be defeated by mere technicality. It shall not be necessary that one paper shall contain all the signatures, but a single petition may be made up of one or more papers, each having the requisite heading.

Separate papers in proper form and duly signed may, before filing, be bound together and shall be regarded as one petition and shall be sufficient if the aggregate number of signatures upon all is not less than the number required by this act. Blank lines upon additional sheets securely fastened to a top sheet, having the prescribed heading, may be used in obtaining signatures, and shall be regarded together with the top sheet having the proper heading as one paper.

The place of residence, business and post office address of a petitioner may be indicated by ditto marks if they are the same as those last written above his signature.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 26, 1907.

INSURANCE

CHAPTER 167

(S. B. 191)

RELATING TO THE COMMISSIONER OF INSURANCE

AN ACT Adding to the Duties of the Commissioner of Insurance and Defining the Same, and Providing for the Necessary Funds to Maintain all Expense Incurred in the Discharge of Said Duties.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duties Added] That there be added to the duties of the commissioner of insurance the duties created by this bill. That the commissioner of insurance is hereby empowered to depute the chief clerk of his office or some other suitable person, or persons to act when required with the full powers herein conferred upon the commissioner of insurance.

§ 2. Duty of Commissioner and Other Officers] The commissioner of insurance and the chief of the fire department of every city or village in which a fire department is established, and the mayor of every incorporated village or town in which no fire department exists, and the township clerk of every organized township without the limits of any organized village or city, shall investigate the cause, origin and circumstances of every fire occurring in such city, village, town or township by which property has been destroyed or damaged by fire, and shall especially make investigation as to whether such fires are the result of carelessness or design. Such investigation shall be begun within five days not including Sunday or the day of the occurrence of such fire, and the commissioner of insurance shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary. The officer making investigation of fires occurring in cities, villages, towns, or townships shall forthwith notify said commissioner of insurance and shall within one week of the occurrence of the fire, furnish to the said commissioner of insurance a written statement of all the facts relating to the cause and origin of the fire, and such other information

as may be called for by the blanks provided by said commissioner of insurance. The said commissioner of insurance shall keep in his office a record of all fires occurring in the state together with all facts, statistics and circumstances, including the origin of the fires which may be determined by the investigations provided by this act, and shall include in his annual report such portion of it, as he may deem necessary and such record shall at all times be open to the public for inspection, and copies of such records shall be furnished, if requested, to each insurance company contributing to the support of this department.

§ 3. Investigations—How Performed] The commissioner of insurance, when in his opinion, further investigation is necessary, shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, he shall cause such person to be arrested and charged with such offense, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case, and shall file in the office of the commissioner of insurance a report of his proceedings and the progress made in all prosecutions for arson, and the result of all such cases which are finally disposed of.

§ 4. May Compel Attendance of Witnesses] The commissioner of insurance or deputy shall have power in any county in the state of South Dakota, to summon and compel the attendance of witnesses before them or either of them, to testify in relation to any matter which is by the provision of this act a subject of inquiry and investigation and may require the production of any book, paper or document deemed pertinent thereto by either of them. Said commissioner of insurance or deputy are each hereby authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before them; and false swearing in any matter or proceeding aforesaid shall be deemed a perjury, and shall be punished as such. Any witness who refuses to be sworn or who refuses to testify, or who disobeys any lawful order of said commissioner of insurance or deputy or who fails to or refuses to produce any book, paper or other document touching any matter under examination or who is guilty of any contemptuous conduct, after being summoned by them, to appear before them, or either of them, to give testimony in relation to any matter or subject under investigation as aforesaid, may be summarily punished by said commissioner of insurance as for contempt, by a fine in a sum not exceeding one hundred dollars. (\$100) or be committed to the county jail until such time as such per-

sons may be willing to comply with any order made by said commissioner of insurance or deputy as provided in this act. Said commissioner of insurance or his deputy shall have the authority at all times of day and night in the performance of the duties imposed by the provisions of this act, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same.

All investigations held by, or under the directions of said commissioner of insurance may in his discretion be private, and persons other than those required to be present by the provisions of this act, may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other, and not allowed to communicate with each other until they have been examined.

§ 5. May Remove Combustibles] The commissioner of insurance, his deputies, the chief of fire department of all villages and towns where a fire department is established, and the mayor of cities and presidents of towns where no fire department exists, and the clerk of each township in the territory outside of the limits of an organized city or town upon complaint of any person having an interest in any building or property adjacent, and without any complaint, shall have a right at all reasonable hours for the purpose of examination to enter into and upon all buildings and premises within their jurisdiction, and whenever any of said officers shall find any building, or other structure, which for want of proper repair, by reason of age or dilapidated condition or for any cause, is especially liable to fire, and which is so situated as to endanger other buildings or property, and whenever any such officers shall find in any buildings or upon any premises, combustible or explosive material, or inflammable conditions, dangerous to the safety of said building or premises, they shall order the same to be removed or remedied, and unless such order shall be forthwith complied with by the owner or occupant of said building or premises, it shall become the duty of said officer to institute proceedings in abatement as provided by law for the abatement of a public nuisance.

§ 6. Violation—Penalty] Any officer referred to in section 2 herein, who neglects to comply with any of the requirements of this act shall be punished by a fine of not less than ten dollars, (\$10) nor more than one hundred dollars, (\$100.00).

§ 7. May Appoint Additional Clerks] The commissioner of insurance is hereby authorized to employ one additional clerk at \$100 per month to be paid from the funds created by this bill and field deputies to be known as fire deputies shall receive not to exceed \$5.00 per diem for services actually performed under the provisions of this act, together with necessary expenses when actually engaged in the discharge of the duties imposed by this bill, the same to be paid from

the revenues paid into the state treasury by the insurance companies in the manner hereinafter provided.

§ 8. Additional Tax] For the purpose of defraying the expense that may be created in the execution of the provisions of this act. Every fire insurance company doing business in the state of South Dakota shall, as a condition of its doing business within the state, pay to the commissioners of insurance within thirty days after the going into effect of this act and annually upon the first day of January thereafter, in addition to the taxes now required by law to be paid by such companies, one-half of one per cent of the gross premium receipts of such companies on all business done in South Dakota the year next preceding, as shown by the annual statements, under oath, to the insurance commissioner. The insurance commissioner shall cover the money so received into the treasury as a special fund for maintaining the expense incurred under this bill. Such portion of said special fund remaining unexpended at the end of any fiscal year, as the commissioner of insurance shall certify is not needed for the maintenance and expense incurred under this bill, shall be kept for the special purpose above specified and in case the accumulating of the tax creates a fund sufficient to meet the expenses of this department without the levy of an annual tax as above specified, then such annual tax may be deferred and suspended until such time as it is again required. The commissioner of insurance shall keep on file in his office an itemized statement of all expenses incurred by authority of this bill and shall approve all vouchers issued therefor, before the same are submitted to the auditor of state for payment, which said vouchers shall be allowed and paid in the same manner as other claims against the state.

§ 9. There shall be paid to the chiefs of fire departments and to mayors of incorporated villages who do not receive compensation for their services and the township clerk of every organized township who are by this act required to report to the commissioner of insurance the sum of one dollar and fifty cents for each fire so reported to the satisfaction of the commissioner of insurance and in addition thereto, mileage at the rate of ten cents per mile for each mile traveled to the place of the fire. Said allowance shall be paid by said commissioner of insurance at the close of each fiscal year out of any funds secured under the provisions of this bill and not otherwise appropriated.

§ 10. That the allowance for expense as provided for in section 7 shall be paid out only on an itemized statement verified by oath, with receipted bills attached, out of the funds created by this act.

Approved March 7, 1907.

CHAPTER 168

(S. B. 99)

RELATING TO SURPLUS FUNDS OF LIFE INSURANCE COMPANIES

AN ACT to Require an Annual Apportionment and Accounting of Surplus Funds by Life Insurance Companies Doing Business in This State, on Deferred Dividend Policies Heretofore Issued.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Annual Apportionment of Surplus Funds] Every life insurance company doing business in this state conducted on the mutual plan, or in which policy holders are entitled to share in the profits or surplus, shall, on all policies of life insurance heretofore issued under the conditions of which the distribution of surplus is deferred to a fixed or specified time and contingent upon the policy being in force and the insured living at that time, annually ascertain the full amount of surplus to which all such policies as a separate class are entitled, and shall annually apportion to such policies as a class the full amount of surplus so ascertained, and carry the amount of such apportioned surplus, plus the actual interest earnings and accretions of such fund, as a distinct and separate liability to such class of policies on or for which the same was accumulated; and no company or any of its officers shall be permitted to use any part of such apportioned surplus fund for any purpose whatsoever, other than for the express purpose for which the same was accumulated. Every company having in force any such deferred dividend policies, shall annually at the time of mailing the premium notice, furnish to each such policy holder an annual statement showing the contingent surplus accumulation to the credit of the policy at the beginning of the preceding year, the rate of interest earned on the accumulation, the amount of interest and the amount of saving and profit contingently credited to said policy during the preceding year, with a showing of the total amount of surplus accumulation then contingently credited to the policy, which statement shall be made in accordance with the following form:

"Statement of Annual Apportionment of Surplus"

Policy No.....	Distribution Period.....	years.	Age at issue.....
Surplus accumulation contingently credited to policy at end of last policy year.....\$.....			
Interest credit, net rate earned by company.....per cent			
Savings and profit additions for year.....			
Contingent surplus credit.....19.....\$.....			
.....Secretary.			

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] Whereas, there is now no adequate provision of law requiring life insurance companies doing business in this state to make a proper accounting of surplus funds, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 20, 1907.

CHAPTER 169

(S. B. 121)

RELATING TO THE SALARY OF THE INSPECTOR OF MINES

AN ACT to Amend Section 151 of the Political Code, Revised Statutes of 1903, Relating to the Salary of the Inspector of Mines of This State.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 151 of the Revised Political Code of South Dakota of 1903, be, and the same is hereby amended to read as follows:

Section 151. Salary—Amount of] The inspector of mines shall receive a salary of one thousand six hundred dollars per annum. The salary of said inspector shall be paid monthly out of the state treasury.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. Emergency] Whereas an emergency exists, this act shall be in force from and after its passage and approval.

Approved March 9, 1907.

CHAPTER 170

(S. B. 210)

RELATING TO STANDARD FORM OF FIRE INSURANCE POLICY

AN ACT Entitled an Act to Amend Section 2, of Chapter 126 of the Session Laws of 1905, Relating to Standard Form of Fire Insurance Policy.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 2, of chapter 126, of the Session Laws of 1905, prescribing a standard form of fire insurance policy, and providing penalties and regulations pertaining thereto, be and the same is hereby amended, by adding thereto the following: "Any

company incorporated under the laws of South Dakota, as a mutual insurance company, or association, having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations and its by-laws shall apply to and form a part of the policy. Providing the same are endorsed in or attached to such policies or contracts of insurance so as to form a part thereof.

§ 2. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 9, 1907.

CHAPTER 171

(S. B. 40)

RELATING TO STOCK INSURANCE COMPANIES

AN ACT to Amend Sections 583 and 586 of the Revised Civil Code of 1903, Relating to Stock Insurance Companies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Capital Stock] That section 583 of the Revised Civil Code of 1903, be, and the same is hereby amended to read as follows: Section 583. "Every stock insurance company organized under this article shall have a capital stock of at least one hundred thousand dollars fully paid in cash. Twenty per cent of the first one hundred thousand dollars of capital stock and ten per cent of any amount in excess of one hundred thousand dollars for which said company may be capitalized must be cash on hand, the remaining amount of said capital must be invested in United States bonds, state, municipal or school bonds, or loans upon unincumbered real property worth at least double the amount loaned thereon; fifty per cent of such loans shall be on South Dakota real estate. The said investments or loans shall be submitted to the governor, state treasurer and auditor of this state for their approval, and if approved, an amount equal to fifty per cent of the entire capital shall be deposited with the commissioner of insurance for the state of South Dakota. Any company which shall become bankrupt or which for any cause shall cease to do business, shall return to its policy holders their pro rata share of the unearned premiums and if there be unsettled losses, they shall, in like manner, be settled pro rata."

§ 2. How Invested] That section 586, of the Revised Civil Code of 1903, be, and the same is hereby amended to read as follows: "Section 586. It shall not be lawful for any insurance company organized under the laws of this state to invest its capital and the funds accumulated in the course of its business, or any part thereof, except

in bonds or mortgages on unincumbered real estate worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policies transferred to the company. At least (50 per cent) fifty per cent of such loans must be on South Dakota real estate, and also such real estate as shall be requisite for its convenient accommodation in the transaction of its business, and also in the bonds of the state, or stocks or treasury notes of the United States, and also the bank stock of national banks, and also in the stock and bonds of any county or incorporated city in the state authorized to be issued by the legislature, to loan the same or any part thereof on the security of such stocks or bonds, or treasury notes, or upon bonds or mortgages as aforesaid, and to change and reinvest the same in like securities as occasion may from time to time require; but the surplus money over and above the capital stock of such insurance company, incorporated under any law of this state, may be invested in or loaned upon the pledge of public stocks or bonds of the United States or any of the states stocks, bonds, or other evidences of indebtedness of any solvent, dividend paying institution, incorporated under the laws of this state or the United States, except their own stock. Provided always, that the market value of such stocks, bonds or evidence of indebtedness shall be at all times during the continuance of such loan, at least ten per cent more than the amount loaned thereon.

§ 3. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 172

(H. B. 204)

PROVIDING FOR THE INSURANCE OF LIVE STOCK

AN ACT Providing for the Insurance of Live Stock.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Insurance Companies May Insure Live Stock] Any insurance company now or hereafter authorized by the commissioner of insurance of this state to transact business in this state may engage in the insurance of live stock against death caused by sickness, accident or disease on either the capital stock or the mutual plan by including provision therefor in its articles of incorporation and filing a certified copy thereof with the insurance commissioner of this state.

§ 2. Securities Must be Deposited with State Treasurer] No mutual insurance company now or hereafter organized under the laws

of any other state or country shall engage in the business of live stock insurance in this state without first depositing and thereafter keeping on deposit with the treasurer of this state the sum of twenty-five thousand dollars (\$25,000.00) in money or in lieu thereof bonds of this state, or of the United States, or county or municipal bonds or first mortgages on real property of any state worth at least double the amount of the mortgage exclusive of buildings and to be approved by the commissioner of insurance of this state, providing, however, that any mutual insurance company of any other state of the United States may file with the insurance commissioner of this state a certificate from the proper officer of such other state that as such officer he holds in trust and on deposit for the benefit of all live stock policy holders of such company the sum of not less than twenty-five thousand dollars (\$25,000.00) as herein provided.

§ 3. Foreign Corporations] Any capital stock company organized under the laws of another state or nation shall not engage in the business of live stock insurance as herein provided unless such company has a fully paid up capital of two hundred thousand dollars (\$200,000.00), twenty per cent of which shall be in cash on hand and the remaining eighty per cent invested and deposited as provided in section two of this act.

§ 4. Securities to Remain as Fund to Secure Payment of Losses] Such money or securities so deposited shall be and remain in the hands of the treasurer of this state as a fund to secure the payment of all losses occurring under all policies or contracts for live stock insurance made by such company in this state or covering property situated within this state unless a certificate as herein provided for shall be obtained from the proper officer of such other state in which the deposit has been made which shall be deemed sufficient.

§ 5. Violation] If any such company organized or operating under the provisions of this act shall violate any of its provisions, the commissioner of insurance shall immediately revoke such company's license, and if the company be a domestic one, take such steps as may be found necessary to dissolve and wind up its affairs.

§ 6. Agent May be Appointed] Any company of a foreign country may duly appoint one or more citizens of the United States, approved by the commissioner of insurance, to hold funds or other property for the benefit of its policy holders and creditors therein. A certified copy of their appointment and of the instrument of trust shall be filed with the commissioner of insurance who shall have the same authority in the premises as in the case of the affairs of all companies. Such funds shall be invested in the same securities as required elsewhere in this act and together with the deposits required shall constitute the assets of such company in respect to its policy holders and creditors in the United States.

§ 7. Withdrawal of Securities] When any such company, hav-

ing made the deposit as herein provided, desires to relinquish the transaction of live stock insurance in this state and withdraw such deposit, and shall file with the commissioner of insurance an application under the oath of its officers stating that all liabilities arising under the contracts or policies provided for in this act are paid and the policies taken up and cancelled, the commissioner of insurance shall thereupon publish notice of such application in a newspaper published at the capital of this state once a week for a period of three months and after such publication, on his being satisfied by the exhibition of the books and papers of such company and an examination by himself or a person appointed by him that all liabilities under the policies or contracts herein mentioned have been fully paid and extinguished the commissioner of insurance shall file a certificate to that effect with the treasurer of this state who shall thereupon deliver such deposit to such company or its assigns or if it shall appear from such application and examination that all of the liabilities of such company have not been paid and extinguished and that the amount of such deposit is more than equal to twice the amount of such remaining liabilities, the treasurer shall thereupon pay to such company or its assigns a part of such deposit retaining an amount equal to twice the amount of the liabilities so remaining. Before turning such deposit over to such company the commissioner of insurance shall cause due notice to be given the insurance department of each state in which such company is operating and if desired the proper officers of such other state or states shall be given a hearing before such deposit is allowed to be withdrawn.

§ 8. Company May Collect Interest on Securities] So long as any deposit required by this act is kept good and the depositing company is solvent the state treasurer may permit the company to collect interest on the securities so deposited and may permit such company to withdraw any of such securities by depositing with him others of the value and character required by this act.

§ 9. Legal Proceedings—Where Instituted] Any insurance company which has made such deposit or the commissioner of insurance in the name of the state or any person entitled to benefit from such deposit may at any time institute in the circuit court of Hughes county, South Dakota, legal proceedings against this state and other parties properly joined therein to enforce, administer or terminate the trust created by such deposit. The process in such suits shall be served upon the commissioner of insurance of this state who shall appear and answer in its behalf and he and the treasurer of this state shall perform such orders and decrees as the court may make therein.

Approved March 11, 1907.

INTOXICATING LIQUORS

CHAPTER 173

(S. B. 172)

RELATING TO INTOXICATING LIQUORS

AN ACT to Provide for the Enforcement of Local Option Laws Prohibiting the Sale of Intoxicating Liquors as a Beverage Without a Permit.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Search Warrant] If any person makes a sworn complaint or affidavit before any justice of the peace, judge of the circuit court, county judge or any municipal or police judge or justice that he has reason to believe and does believe that intoxicating liquors are sold, furnished or given away as a beverage or are kept for the purpose of being sold, furnished or given away as a beverage without a permit as provided for by law, and asking for a search warrant to inquire into the matter, such magistrate or judge shall issue his warrant, directed to any officer whom the complainant may designate having power to serve criminal process, commanding him to search the premises designated in such complaint or affidavit and warrant, and if such liquors are there found, to seize the same, with the vessels in which they are contained, and all the implements and furniture used or kept for such illegal selling, furnishing or giving away of intoxicating liquors, and them safely keep and make immediate return on said warrant. Such liquors, furniture and implements used for such sale shall be held subject to the order of the court or magistrate to be used as evidence in the prosecution of any case for the violation of any local option law or any ordinance prohibiting the sale of intoxicating liquor as a beverage throughout the district, township, town, city or county where seized.

§ 2. Duty of Officers] When such intoxicating liquors or implements, vessels or furniture used for the sale, furnishing or giving away of intoxicating liquors as a beverage are seized as hereinbefore provided the officer serving the warrant shall forthwith file a complaint charging the violation of the local option law which the evidence in the case justifies. If such officer refuses or neglects to file the complaint then the person filing the affidavit for the search warrant or any other person may file such complaint, but nothing herein contained shall prevent any person or officer filing such complaint before the search warrant is issued or served, and a warrant for the arrest of the person

or persons so offending shall thereupon be issued and the same proceedings shall then be had as now provided by law, and all intoxicating liquors, vessels, furniture and implements seized may be used as evidence at the trial or hearing based upon such complaint and the possession of such intoxicating liquors, vessels, furniture and implements shall be prima facie evidence of guilt.

§ 3. Affidavit Must be Filed] No warrant for search shall be issued until there has been filed with the magistrate or judge an affidavit particularly describing the house or place to be searched, the things to be searched for, and alleging substantially the offense in relation thereto and that affiant believes and has good cause to believe that such liquor is there concealed for unlawful purposes.

§ 4. Warrant—What to Contain] The warrant for search shall be directed to the proper officer and shall show by a copy of the affidavit inserted therein or annexed and referred to, or shall recite all of the material facts alleged in the affidavit and shall particularly describe the thing to be searched for and the place to be searched. A warrant substantially in the following form shall be sufficient:

The State of South Dakota, County ofss.

To Greeting:

Whereas, there has been filed with the undersigned an affidavit of which the following is a copy. (Here insert copy of affidavit.)

These are therefore to command you in the name of the state of South Dakota, together with the necessary and proper assistance to enter into (here describe the house or place in the affidavit) of the said situated in the of in the county aforesaid and there diligently search for the said intoxicating liquors and implements, to-wit: (Here describe the articles as in the affidavit) and that you bring the same or any part thereof found in such search forthwith before me to be disposed of and dealt with according to law.

Given under my hand this.... day of.....A. D.....

§ 5. If fluids be poured out or otherwise destroyed by tenant, assistant or other person when the premises are searched or about to be searched, manifestly for the purpose of preventing their seizure by officers authorized to make such search and seizure, said fluids shall be held to be prima facie intoxicating liquor and intended for unlawful sale.

§ 6. Officer Shall Publicly Destroy Liquor] When liquors and vessels are seized as provided in the preceding sections the officer who made such seizure shall in his return upon the warrant make a statement setting forth their seizure by him and their place of detention, and they shall be held by said officer subject to the order of the court. If upon the trial of the accused person or persons he or they shall be convicted of the acts alleged the court shall order as

a part of the judgment, in addition to the other penalties prescribed by the laws of this state that the officer having the custody of such intoxicating liquors, vessels, furniture and implements shall publicly destroy the same, but if such person or persons shall be acquitted such intoxicating liquors and fixtures shall be returned to them. When any liquors shall have been seized by virtue of any such warrant the same shall not be discharged or returned to any person claiming the same by reason of any alleged insufficiency of the description in the complaint or warrant of the liquor or place, but the claimant shall be entitled to a hearing upon said question when the case is tried as provided for in this act.

§ 7. Posting Warrant] If no one is found in possession of the premises where such liquors may be found the officer taking the same shall post in a conspicuous place on said building or premises a copy of his warrant and take possession of such liquors and vessels containing the same and hold them subject to the order of the court or magistrate issuing the warrant and make return of his doings thereon. Whereupon it shall be the duty of the court or magistrate to fix a time for hearing and determining the purpose for which such liquors are kept and issue notice thereof to the officer who shall post a copy thereof on the building or premises where the liquors were found. If at the time fixed for hearing no persons appear nor within thirty days thereafter to claim such liquors and implements the magistrate or court shall order the same to be publicly destroyed.

§ 8. Private Residences Exempt] No warrant shall be issued to search a private residence occupied as such unless it or some part of it is used as a store or shop, hotel or boarding house, or unless such residence is a place of public resort.

§ 9. The person making affidavit for the warrant to search any place where intoxicating liquor is disposed of contrary to law may, personally or by agent, accompany the officer who serves the warrant and enter the place with such officer and give information and assistance to such officer in searching such place for such intoxicating liquors as hereinbefore described.

§ 10. Cannot Recover] Liquors seized as hereinbefore provided and the vessels containing them shall not be taken from the custody of the officer by an action in claim and delivery or other process while the proceedings herein provided are pending, and final judgment of conviction in such proceedings is in all cases a bar to all suits for the recovery of any liquors seized or of the value of the same, or for damages alleged to arise by reason of the seizing and detention thereof.

§ 11. Signs, Notices, Evidence—When] The payment of the United States special tax as a retail dealer except by regular registered pharmacists or legally licensed dealers in intoxicating liquors, or notice or sign of any kind on or about any place except regularly licensed saloons, indicating that liquors are there sold, kept for sale

or given away, shall be held to be prima facie evidence that the person or persons paying said tax and the party or parties displaying such notice or sign are violating the law prohibiting the sale of intoxicating liquor as a beverage, and the keeping of intoxicating liquors in any room or building or in any other place except in a regular drug store or in a licensed saloon or in a bona fide private residence shall be prima facie evidence that such liquors are kept for unlawful sale, furnishing or giving away.

Approved February 26, 1907.

CHAPTER 174

(H. B. 248)

LIMITING THE DEALERS IN INTOXICATING LIQUORS

AN ACT Entitled an Act Regulating and Limiting the Number of Dealers in Intoxicating Liquors Which May be Licensed.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Number Limited] In townships and incorporated towns and cities not exceeding one thousand inhabitants, as determined by the last state or federal census, wherein, by a vote of the people, permission is granted to sell intoxicating liquors, not more than one license shall be granted to sell intoxicating liquors, for each three hundred, or major fraction thereof of population residing in such township, incorporated town or city as shown by such last federal or state census; provided, that in each such township, incorporated town or city where permission is granted to license the sale of intoxicating liquors, at least two such licenses may be granted.

§ 2. Repeal] All acts, or parts of acts, in conflict with this act are hereby repealed.

Approved March 4, 1907.

CHAPTER 175

(H. B. 191)

RELATING TO INTOXICATING LIQUORS

AN ACT to Amend Section 2859 of the Revised Political Code of 1903, Relating to the Sale of Intoxicating Liquors in Proximity to Public or Private Schools and Churches.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 2859 of the Revised Political

Code of 1903 be and the same is amended to read as follows: No person, firm or corporation shall deal in, sell, keep for sale or give away intoxicating liquors or maintain any place for the sale or disposal for profit or otherwise of intoxicating liquors within three hundred (300) feet of the grounds of any public or private school or within two hundred (200) feet of any church.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 25, 1907.

CHAPTER 176

(S. B. 186)

RELATING TO SALE OF INTOXICATING LIQUORS BY PHARMACISTS

AN ACT to Amend Chapter 146 of the Session Laws of 1905, Entitled "An Act to Amend Section 2860 of the Revised Political Code of 1903, as Amended by Chapter 191 of the Laws Passed at the Eighth Session of the Legislature of the State of South Dakota, Session Laws 1903, Relating to the Sale of Intoxicating Liquors by Pharmacists."

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. (Amendment) That the said chapter 146 be and is hereby amended to read as follows:

That section 2860 of the Revised Political Code of 1903, as amended by chapter 191 of the laws passed at the eighth session of the legislature of the state of South Dakota, Session Laws 1903, be amended to read as follows:

Section 2860: It shall be lawful for any registered pharmacist owning and conducting a pharmacy whose certificate of registration is in force to sell spirituous or vinous liquors for medicinal, mechanical, scientific and sacramental purposes only. And it shall be unlawful for any registered pharmacist to sell or give away any intoxicating liquors whatever to be used as a beverage or drank upon the premises or in a room or place adjoining the premises, and any registered pharmacist who shall sell any intoxicating liquors for the purposes mentioned in this section shall have a stock of drugs of the value of not less than six hundred dollars, exclusive of fixtures and intoxicating liquors.

Any registered pharmacist who shall sell or in any manner dispose of said intoxicating liquors for any other purpose than authorized in this section or allow intoxicating, brewed or fermented liquors to be drank upon the premises or in any room or place adjoining these premises shall be, upon conviction thereof, fined not less than

one hundred dollars nor more than three hundred dollars, and for the second conviction shall be imprisoned in the county jail not less than ten nor more than thirty days and shall forfeit his registration as a registered pharmacist and shall be liable to all the penalties, prosecutions and proceedings at law and in equity provided against persons selling without authority, and upon said conviction the clerk of the circuit court shall within ten days after such judgment or order transmit to the secretary of the said board of pharmacy the certified record thereof, upon receipt of which the board of pharmacy shall, at their first regular meeting thereafter, strike the name of the said druggist from the list of registered pharmacists and revoke his certificate of registration. Provided that no such pharmacist shall sell spirituous or vinous liquor for medicinal, mechanical, scientific or sacramental purposes, or either of them, within the limit of any precinct, town or city wherein the question of granting permits to sell intoxicating liquors at retail has been submitted to the voters thereof, as provided in section 2856 of this code, and such questions shall have been decided at said election against the granting of such permits for the sale of intoxicating liquors at retail, except upon a prescription of a regularly licensed resident physician of the county wherein such pharmacist conducts his business, stating the liquor is needed and prescribed for actual sickness and also stating the times and the amount to be taken at a time, and no prescription shall be refilled, and any pharmacist violating the provisions of this section in any such precinct, town or city, wherein the question of granting permits for the sale of intoxicating liquors at retail shall have been decided against as provided in section 2856, shall upon conviction of such offense be fined not to exceed \$100, or be imprisoned in the county jail not more than thirty days, or be punished by both fine and imprisonment, in the discretion of the court, and provided further, that it shall be lawful for any person, copartnership or corporation, in good faith engaged in the business of selling medicines, drugs or medicinal preparations at wholesale to sell spirituous or vinous liquors to persons lawfully conducting a drug house or to any registered pharmacist owning and conducting a pharmacy and whose certificate of registration is in force. Provided, also, further that said wholesale drug house shall have a stock of medicines, drugs and medicinal preparations to the amount of not less than twenty thousand dollars, exclusive of liquors and fixtures, and it shall be unlawful for any person, co-partnership or corporation engaged in the business of selling medicines, drugs, or medicinal preparations at wholesale, or any partner, stockholder, or agent, salesman or employe of the same as such to sell any intoxicating liquors to any person or persons other than those authorized in this section, or to sell or offer for sale or give away any intoxicating liquors whatsoever to be used as a beverage or to be drank upon the premises or in any room or place adjoining

ing the premises. Any person who shall, as such wholesale druggist or a partner, stockholder, agent, salesman or employe of any person, co-partnership or corporation engaged in the business of selling medicines, drugs or medicinal preparations at wholesale sell or offer for sale any intoxicating liquors to any person or persons other than persons lawfully conducting a drug house or lawfully selling medicines, drugs, or medicinal preparations, or to a registered pharmacist owning and conducting a pharmacy and whose certificate of registration is in force, or sell or offer for sale, or give away any intoxicating liquors to be used as a beverage or to be drank upon the premises or in any room or place adjoining the premises shall be on conviction thereof, fined not less than one hundred dollars or more than three hundred dollars, and for the second conviction shall be imprisoned in the county jail not less than ten or more than thirty days, and shall in all cases be liable to all the penalties, prosecutions and proceedings at law and in equity provided against persons selling without authority.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 26, 1907.

CHAPTER 177

(S. B. 145)

FORBIDDING THE SALE OF INTOXICATING LIQUORS WITHIN ONE-THIRD OF A MILE OF ANY COLLEGE OR SCHOOL

AN ACT Entitled an Act Forbidding the Sale of Intoxicating Liquors Within One-third of a Mile of Any College or Academy Providing Regular Classical and Scientific Courses.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Sale of Prohibited—Where] No license shall be granted for the sale of intoxicating liquors at any place within one-third of a mile of any college or academy in the state of South Dakota, which gives instruction in regular classical and scientific courses, and any license issued or granted for the sale of intoxicating liquors within one-third of a mile of any such college or academy shall be revoked, and the sale of liquor within such proscribed territory be enjoined by the circuit court upon proper application therefor; provided that this act shall not be construed to apply to any school or college devoted simply to instruction in business methods.

2. Repeal] All acts, or parts of acts in conflict with act are hereby repealed.

Approved March 7, 1907.

CHAPTER 178

(S. B. 187)

RELATING TO SALE OF INTOXICATING LIQUORS

AN ACT to Amend Section 1546 of the Revised Political Code of 1903, Being Section One of Chapter 143 of the Session Laws of the State of South Dakota for 1901, Entitled an Act to Provide for Suppressing and Preventing the Illegal Sale of Intoxicating Liquors in Cities and Incorporated Villages and Towns.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1546 of the Revised Political Code of 1903, being chapter 143 of the Session Laws of the state of South Dakota for the year 1901 be and the same is hereby amended to read as follows:

§ 1546. Amendment] Each incorporated city or town organized under and by virtue of a special charter or under and by virtue of the general laws of the state of South Dakota in which said city or town the voters thereof have determined conformably to the provisions of section 2856 of this code against the sale of intoxicating liquors at retail is hereby authorized and empowered, through its common council or board.

1st. To restrain, prohibit and suppress any person or persons from vending, giving away or dealing in spirituous, fermented or vinous liquors or beer.

2nd. To restrain, prohibit and suppress any person or persons from keeping tippling shops, and to prohibit and suppress tippling shops.

3rd. Gambling houses, public stores or shops in which games of cards or chance are played for money, chips or anything of value permitted, houses of ill fame, taverns and houses or places wherein spirituous, vinous and fermented liquors or beer are sold without a license, and all places wherein any of such liquors are sold unlawfully, and tippling houses are hereby declared to be and shall be deemed to be public or common nuisances; provided, however, that the provisions of this act shall not apply to registered pharmacists in selling any of such liquors in compliance with the laws of this state relating to registered pharmacists selling the same under a permit.

4th. All acts and parts of acts in conflict with this act are hereby repealed.

5th. Whereas there is no adequate provision of the law for suppressing and preventing the unlawful sales of intoxicating liquors and for the abating of places wherein such liquors are sold or given away unlawfully an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 25, 1907.

CHAPTER 179

(S. B. 287)

AN ACT Entitled an Act to Submit to the Electors of the State of South Dakota for Their Approval at the Next General Election Under the Provisions of Section 1 of Article 3 of the Constitution, and Article 3, Chapter 2 of the Political Code, a Law Providing for an Act to Amend Chapter One Hundred Sixty-six of the Session Laws of 1903, Being an Act to Amend Section 2856 of the Revised Political Code of 1903, Being Section 23 of Chapter 72 of Session Laws of the State of South Dakota for 1897, Entitled an Act to Provide for the Licensing, Restricting and Regulation of the Business of the Manufacture and Sale of Spirituous and Intoxicating Liquors.

Whereas, under the provisions of section 1, of article 3, of the constitution and article 3, of chapter 2, of the Political Code, a petition has been filed in the office of the secretary of state, signed by more than five per centum of the qualified electors of the state in the manner and form therein directed, petitioning that the following proposed law be enacted and submitted to a vote of the electors of the state at the next general election to be held in the year 1908. Certified copies of said petition having been transmitted to the senate and the house of representatives by the secretary of state.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That the following act be and the same is hereby enacted and submitted to the electors of this state at the next general election for their approval:

An act to amend chapter one hundred sixty-six (166) of the Session Laws of 1903, being an act to amend section 2856 of the Revised Political Code of 1903, being section 23 of chapter 72, of Session Laws of the state of South Dakota for 1897, entitled: an act to provide for the licensing, restricting and regulation of the business of the manufacture and sale of spirituous and intoxicating liquors.

Be it Enacted by the People of South Dakota:

§ 1. That section one (1) of chapter one hundred sixty-six (166) of the Session Laws of the state of South Dakota for 1903 be and the same is hereby amended so as to read as follows:

(Chapter 166, Session Laws 1903.) At the annual municipal election held in any township, town or city in this state for general municipal purposes, the question of granting permits to sell intoxicating liquors within the corporate limits of such township, town or city shall be submitted to the legal voters thereof upon petition signed by twenty-five (25) legal freeholder voters of such township, town or city, to be filed with the clerk or auditor of such township, town or city thirty days before election, which petition shall state that a vote is desired upon such question. The question shall be submitted upon a separate ballot conforming with the general election laws of

the state, upon which ballot there shall be printed the words: "Shall permits be granted to sell intoxicating liquors?" before which words there shall be printed the words "yes" or "no," and any voter in favor of the sale of such liquors shall mark the word "yes" with a cross (X), and any voter opposed to such sale shall mark the word "no" with a cross (X), and if a majority of the voters of such township, town or city shall vote in favor of such sale of intoxicating liquors the corporate authorities shall grant permits for such sale for the ensuing year, commencing on the first day of July thereafter in accordance with the provisions of this act, but if a majority of the voters shall not vote in favor of such sale no permits shall be granted.

Provided, however, that at any regular general election held in this state as provided for in section 1864 of the Revised Political Code of 1903, the question of whether permits to sell intoxicating liquors shall be granted within the corporate limits of any organized county, may be submitted to the legal voters thereof upon a petition signed by not less than ten per cent of the qualified electors of such county. Said petition shall be filed with the county auditor at least sixty days before the election and shall state that a county vote is desired upon the question: "Shall intoxicating liquors be sold in (naming the county) county?" And also that the signers of said petition are legal voters of the county, together with their occupation and post office addresses. It shall be the duty of the county commissioners of the county wherein such petition has been filed to determine the sufficiency of such petition and if found sufficient, to order a vote to be taken upon such question. Notice of such vote shall be given in the same manner and form as notice of general elections as now provided for by law. The question shall be submitted upon a separate ballot and said election shall be conducted in the same manner and form as near as may be applicable, as the same is hereinbefore provided for the submission of said question to the electors of a township, town or city and under the general election laws of the state except as herein otherwise provided. If a majority of the votes cast upon said question at said election shall be against the sale of intoxicating liquors in such county no permits for the sale of the same shall be granted anywhere within such county nor in any township, town or city therein from and after the first day of July next following such election. If a majority of the votes cast upon said question shall be in favor of the sale of intoxicating liquors within such county, then and in that case nothing in this act shall be so construed as to prevent said question of selling intoxicating liquors from being submitted to the electors of any township, town or city at the annual municipal election thereof as hereinbefore provided, for the next ensuing two years, and annual permits may be granted in those townships, towns and cities that shall cast a majority vote in favor thereof at their regular annual municipal elections. But it shall not be lawful

to grant permits in any other township, town or city in such county nor shall any such permits be granted after the expiration of two years unless at the next general election a vote shall have been had in accordance with the provisions of this act and a majority of the votes cast upon such question shall have been in favor of granting such permits.

Provided further; that at any time before the general election to be held in the year 1910 said question of selling intoxicating liquors may be submitted to the electors at a special election called for that purpose when a petition signed by at least twenty per cent of the qualified electors of said county shall be filed with the county auditor. Said election shall be conducted in manner and form as near as may be as the same is hereinbefore provided for the submission of said question to the electors of any county at any general election. If a majority of the votes cast at such special election shall be against the sale of intoxicating liquors within such county no permits for such sale shall be granted in such county nor in any precinct, township, town or city therein from and after the first day of July next following said election. If a majority of the votes cast at such special election shall be in favor of the sale of intoxicating liquors within such county, it shall be lawful until the next general election to grant permits for the sale of intoxicating liquors only in those precincts, townships, towns and cities that shall cast a majority vote in favor thereof at their regular annual municipal elections as provided in this act.

§ 2. In determining whether such petition asking for a county vote on the question of granting permits for the sale of intoxicating liquors in any county, contains the requisite per centage of legal voters as signers, said percentage shall be based upon the total vote for governor at the last preceding general election.

§ 3. Nothing in this act shall be so construed as to prohibit the sale by qualified phamacists as now designated by law, of pure alcohol for scientific and manufacturing purposes, or wines to church officials for sacramental purposes, nor alcoholic stimulants as medicine in cases of actual sickness, but such stimulants shall be sold only upon the written prescription of a regular practicing physician, dated and signed by him, and certified, on his honor, that he, the physician, has personally examined the applicant, naming him, and that he finds him actually sick and in need of the stimulant prescribed as medicine; provided, that a physician who does not follow the practice of medicine as a principal and usual calling shall not be authorized to give the prescription provided for in this section; and provided further, that no person shall be permitted to sell more than once on the same prescription, nor shall any person be permitted to sell at all on the prescription of a physician not herein authorized to give it, nor on a prescription which is not dated, signed and certified as above required. Every person selling such stimulants upon the prescription

herein provided for shall immediately upon such sale cancel such prescription by endorsing thereon the word "canceled" and the date of cancellation, and shall keep the same on file in the drug store where such sale is made. A record of all sales of spirituous or vinous liquors shall be kept by the druggist or person making such sales, in a book in which shall be recorded the date of the sale, the name of the purchaser, the residence of the purchaser, the kind and quantity of liquor sold, the purpose and use for which it is purchased, the price charged, the name of the physician if on a prescription and the signature of the purchaser. Said records, book and prescription file shall be open to the inspection of the public, and any person who shall fail to keep such record or shall fail or refuse to make any entry therein required by law, or shall destroy or alter or change in any way any such record or any entry therein or any prescription, or shall fail to cancel any such prescription, or shall sell intoxicating liquors for medicinal purposes except on a written prescription shall upon conviction be fined not less than fifty dollars nor more than five hundred dollars or be imprisoned in the county jail for not less than ten nor more than thirty days or be punished by both such fine and imprisonment, and any person who shall be guilty of a second or subsequent offense shall be punished as now provided by law.

§ 4. Any person or persons who shall engage in the business of selling intoxicating liquors in any precinct, township, town or city in any county without a permit as hereinbefore provided and contrary to the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished as now provided by section 2838 of the Revised Political Code of 1903.

§ 5. Any board, officer or officers who shall accept any bond of any person, firm or corporation intending to engage in the business of selling intoxicating liquors, or who shall grant, issue or deliver any permit for the sale of intoxicating liquor contrary to the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars and the costs of prosecutions, or by imprisonment in the county jail for not less than ten nor more than thirty days or by both such fine and imprisonment.

§ 6. All acts and parts of acts in conflict with this act are hereby repealed.

IRRIGATION

CHAPTER 180

(H. B. 158)

REGULATING APPROPRIATION, DISTRIBUTION AND USE OF WATER

AN ACT Entitled an Act Prescribing Regulations for the Appropriation, Distribution and Use of Water for Irrigation, Mining, Water Power and Other Beneficial Uses.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Waters Public.] All the waters within the limits of the state from all sources of water supply belong to the public and, except as to navigable waters, are subject to appropriation for beneficial use.

§ 2. Beneficial Use, Appurtenance, Priority] Beneficial use shall be the basis, the measure and the limit of the right to the use of water, and all waters appropriated for irrigation purposes shall be appurtenant to specified lands owned by the person claiming the right to use the water, so long as the water can be beneficially used thereon, or until the severance of such right from the land in the manner hereinafter provided. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to the passage of this act, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. All claims to the use of water initiated after the passage of this act shall relate back to the date of receipt of an application therefor in the office of the state engineer, subject to compliance with the provisions of this act and the rules and regulations established thereunder.

§ 3. Eminent Domain] The United States, the state, or any person or any private or public corporation, or any association of persons may exercise the right of eminent domain to acquire as a public use any property or rights now or hereafter existing when found necessary for the application of water to beneficial uses, including the right to enlarge existing structures and to use the same in common with the former owner. Any canal right of way so acquired shall be so located as to do the least damage to private or public property, consistent with proper and economical engineering construction. Such property or rights may be acquired in the manner provided by law for the taking of private property for public use.

§ 4. Reclaiming Waters] Water turned into any natural or artificial water course by any party entitled to the use of such water may be reclaimed below and diverted therefrom by such party, sub-

ject to existing rights. Due allowance for losses to be made, as determined by the state engineer.

§ 5. State Engineer, Appointment, Duties, Powers, Qualifications and Salary] There shall be a state engineer, who shall be a technically qualified and experienced hydraulic engineer, and who shall be appointed by the governor and such appointment confirmed by the senate. He shall hold office for the term of six years from and after his appointment, or until after his successor shall have been appointed and shall have qualified. He shall have general supervision of the waters of the state and of the measurement, appropriation and distribution thereof, and shall perform such other duties as are required by this act. The state engineer shall receive a salary of \$2,000.00 per annum.

§ 6. Assistant State Engineer and Expenses of State Engineer's Office] The governor shall have power to appoint an assistant state engineer at a salary not to exceed \$1,500.00 per annum. The state engineer may employ other and additional assistants and purchase material and supplies for the proper conduct and maintenance of his office and department, in pursuance of appropriations made from time to time for such purposes. Not in excess of appropriations made from time to time for such purpose. Provided that in no fiscal year the expenses of the state engineer's office shall exceed the appropriation therefor.

§ 7. Bond of State Engineer and Assistant State Engineer] Before entering upon the duties of his office, the state engineer shall give bond, to be approved by the attorney general, for the faithful performance of the duties of his office, in the penal sum of five thousand dollars. The assistant state engineer shall also give bond, to be approved by the attorney general, for the faithful performance of the duties of his office, in the penal sum of five thousand dollars.

§ 8. Traveling Expenses] The state engineer and assistant state engineer, and other authorized assistants, shall be allowed actual and necessary traveling expenses while away from the office on official business.

§ 9. State Engineer's Report] The state engineer shall prepare and deliver to the governor on or before December 31 of the year preceding the regular session of the legislature, and at other times when required by the governor, a full report of the work of his office, including a detailed statement of the expenditures thereof, with such recommendations for legislation and appropriations as he may deem advisable.

§ 10. Fees of State Engineer] The state engineer shall receive the following fees, to be collected in advance and to be paid by him into the general fund of the state treasury on the first Monday of January, April, July, and October of each year.

(a) For filing and examining an application for permit to con-

struct a dam across a dry water course for the purpose of collecting storm water and of applying the same to beneficial use, one dollar.

(b) For filing and examining an application for permit to appropriate water, map and field notes of same, which shall include the filing of proofs of publication and all other papers relating to the application up to the recording of the permit to appropriate water, five dollars.

(c) For recording any permit, certificate of construction or license issued, or any other water right instrument, one dollar for the first hundred words and fifteen cents for each additional hundred words or fraction thereof.

(d) For filing any other paper, one dollar.

(e) For issuing certificates of construction or licenses to appropriate water, one dollar each.

(f) For making copy of any document recorded or filed in his office, fifteen cents for each hundred words or fraction thereof.

(g) For blue print copy of any map or drawing, ten cents per square foot or fraction thereof. For other copies of drawings, actual cost of the work.

(h) For certifying to such copies, one dollar for each certificate.

(i) For examining, in connection with water right applications, plans and specifications for any dam, not exceeding ten feet in extreme height from the foundations, ten dollars; for a dam higher than ten feet and not exceeding thirty feet, twenty dollars; for a dam higher than thirty feet and not exceeding fifty feet, thirty dollars; for a dam higher than fifty feet, fifty dollars; or for a canal or other water conduit of an estimated capacity exceeding fifty and not more than one hundred cubic feet per second, twenty dollars; for an estimated capacity exceeding one hundred cubic feet per second, thirty dollars.

(j) For inspecting dam sites and construction work when required by law, or when necessary in the judgment of the state engineer, ten dollars per day and actual and necessary traveling expenses. The fees for any inspection deemed necessary by the state engineer and not paid on demand shall be a lien on any land or other property of the owner of the works, and may be recovered by the state engineer in any court of competent jurisdiction.

(k) For rating ditches or inspecting plans and specifications of works for the diversion, storage and carriage of water, at the request of private parties, not in connection with an application for right to appropriate water, actual cost and expenses; and the state engineer shall attach his approval to such plans and specifications if found satisfactory.

(l) For such other work as may be required of his office, the fees provided by law.

(m) In ascertaining actual cost of any work, as the term is used

in this section, the salary of any salaried officer for the time employed shall be included.

§ 11. Records of State Engineer] The records of the office of the state engineer are public records and shall remain on file in his office, and be open to the inspection of the public at all times during business hours. Such records shall show in full all permits, certificates of completion of construction and licenses issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water.

§ 12. Rules and Regulations] The state engineer shall make all necessary general rules and regulations to carry into effect the duties devolved upon his office. All such rules and regulations relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water, shall be modified by the state engineer, if required by a two-thirds vote of the board of water commissioners hereinafter established.

§ 13. Appeal to Board of Water Commissioners] Such modification of the rules and regulations of the state engineer shall be voted upon by the board of water commissioners only on an appeal from the decision of the state engineer.

§ 14. Hydrographic Surveys and Co-operation] The state engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, obtaining and recording all available data for the determination, development and adjudication of the water supply of the state; including the location and survey of suitable sites for dams and reservoirs and the determination of the approximate water supply, capacity, and cost of each. He shall be authorized to co-operate with the agencies of the United States engaged in similar surveys and investigations, and in the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of his office, and may accept and use, in connection with the work of his department, the results of the work of the agencies of the United States.

§ 15. Suits for Adjudication of Water Rights] Upon the completion of such hydrographic survey of the several stream systems of the state, the same shall be filed in the office of the state engineer as a part of the records thereof, to be used as evidence in suits for the adjudication of water rights. And whenever suit is brought by any person, firm or corporation to adjudicate or determine conflicting water rights in any of the courts of record of this state, a copy of the complaint shall be by the complainant mailed by registered letter to the state engineer at his office at the state capital, at the time of the first service of summons in the action, and likewise a copy of any amended complaint or cross-complaint shall be mailed in like manner to the state

engineer immediately after service thereof upon the opposing party; and if in the judgment of the state engineer, the public interest requires action adverse to any party thereto, then he may call upon the attorney general of this state to intervene in such action, and the attorney general shall thereupon appear on behalf of the state and intervene in such action and take such steps as may be necessary to protect the interests of the public, of the state, or any of its institutions, and no issues shall be tried or any adjudication had by any court of this state in actions arising for the determination of water rights until it is made to appear by registry receipt and affidavit of mailing or otherwise to the satisfaction of the court, that service of the pleadings hereinbefore specified have been had upon the state engineer at least thirty days before the application for final adjudication. It shall further be the duty of the attorney general to enter original suit on behalf of the state for the purpose of determining conflicting water rights, when in the judgment of the state engineer the public interests require such action.

§ 16. Parties and Costs of Suits] In any suit for the determination of a right to the use of the waters of any stream system, all those whose claims to the use of such waters are of record and all other claimants, so far as they can be ascertained with reasonable diligence, shall be made parties. When any such suit has been filed the court shall, by its order duly entered, direct the state engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided, in order to obtain all data necessary to the determination of the rights involved. The costs of such suit shall include the fees of witnesses, the taking of depositions and the fees of officers for serving process and together with the costs on behalf of the state, and of such surveys, shall be charged against each of the private parties thereto in proportion to the amount of the water right allotted. The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved; and the attorney general may bring suit as provided in section 15 in any court having jurisdiction over any part of the stream system, which shall likewise have exclusive jurisdiction for such purposes.

§ 17. Fund for Hydrographic Surveys] For the purpose of advancing the money required for any surveys so ordered by the court, there is hereby appropriated and set apart from any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of one thousand dollars, to be known as the hydrographic survey fund, which shall be a permanent fund and which shall be used only for the payment of the expenses of such surveys; and all claims for services rendered, expenses incurred or materials or supplies furnished under the direction of the state engineer in the prose-

cution of said work shall be approved by the state engineer and properly vouchered and filed in the office of the state auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrants against the hydrographic survey fund on the state treasurer, in payment thereof. The amounts paid by the parties to said suits, on account of such surveys shall be paid to the state treasurer, who shall credit the same to such fund which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.

§ 18. Filing of Decree Adjudicating Water Rights] Upon the adjudication of the rights to the use of the waters of a stream system, two certified copies of the decree shall be prepared by the clerk of the court, at the cost of the parties, one copy shall be filed in the office of the state engineer, and the other in the office of the water commissioner of the water division in which the stream system is situated. Such decree shall in every case declare as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the rights and its priority.

§ 19. Application for Water Right] Any person, association or corporation, public or private, hereafter intending to acquire the right to the beneficial use of any waters shall, before commencing any construction for such purpose, or before taking the same from any constructed works, make an application to the state engineer for a permit to appropriate, in the form required by the rules and regulations established by him. Such rules and regulations shall, in addition to providing the form and manner of preparing and presenting the application, require the applicant to state the amount of water and period or periods of annual use, and all other data necessary for the proper description and limitation of the right applied for, together with such information, maps, field notes, plans and specifications as may be necessary to show the method and practicability of the construction and the ability of the applicant to complete the same. All such maps, field notes, plans and specifications shall be made from actual surveys and measurements, and shall be duly filed in the office of the state engineer after the approval of the application. The state engineer may require additional information not provided for in the general rules and regulations, in any case involving the diversion of five hundred cubic feet per second, or more, or the construction of a dam more than thirty feet high from the foundation. The owners of works proposing to store or carry water in excess of their needs for beneficial use, may make application for such excess, and shall be held as trustees of such right for the parties applying the water to a beneficial use, and shall be required to sell water rights for a reason-

able price and to furnish the water for such parties at reasonable rates for storage, or carriage, or both, as the case may be.

§ 20. Filing and Correction of Application] The date of receipt of such application in the state engineer's office shall be endorsed thereon and noted in his records. If the application is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to the showing of the applicant to carry the construction to completion, it shall be returned with a statement of the corrections, amendments or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refileing thereof. If refiled, corrected as required within such time, the application shall, upon being accepted, take priority as of date of its original filing, subject to compliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refileing. Provided, that the plans of the construction may be amended, with the approval of the state engineer, at any time; but no such change shall authorize any extension of time for construction beyond five years from the date of the permit, except as provided in section 30. Provided, further, that a change in the proposed point of diversion of water from a stream shall be subject to the approval of the state engineer, under the provisions of paragraph 50 hereof, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

§ 21. Publication of Notice] Upon the filing of an application which complies with the provisions of this act and the rules and regulations established thereunder, accompanied by the proper fees, the state engineer shall instruct the applicant to publish notice thereof in a form prescribed by him, in some newspaper of general circulation in the stream system, once a week for four consecutive weeks. Such notice shall give all essential facts as to the proposed appropriation among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of the applicant and the time when the application will be taken up by the state engineer for consideration. Proof of publication, as required, shall be filed with the state engineer within sixty days from the date of his instructions to make publication. In case of failure to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, within the time required, the application shall be treated as an original application filed on the date of receipt of proofs of publication in proper form.

§ 22. Approval of Application] Upon the receipt of the proofs of publication, accompanied by the proper fees, the state engineer shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available, and from the records, whether there is unappropriated water available for the

benefit of the applicant. If so, he shall endorse his approval upon the application, which shall thereupon become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed, not exceeding five years from the date of approval, and the time within which the water shall be applied to a beneficial use, not exceeding four years in addition thereto. Provided, that the state engineer may, in his discretion, approve any application for a less amount of water or may vary the periods of annual use, and the permit to appropriate water shall be regarded as limited accordingly.

§ 23. Rejection and Appeal] If, in the opinion of the state engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules and regulations thereunder. He may also refuse to consider or approve an application or order the publication of notice thereof, if, in his opinion, the approval thereof would be contrary to the public interest. Any applicant may appeal from such decision of the state engineer, or from any other decision by him which denies a substantial right, within sixty days from the date thereof, to the district court of the county in which the proposed place of diversion or storage is situated. In the absence of such appeal, the decision of the state engineer shall be final.

§ 24. Prosecution of Work] The construction of the works shall be diligently prosecuted to completion, and if one-fifth of the work shall not be completed within one-half the time allowed as determined by the state engineer, he may accept and approve, as herein provided, an application for the use of all or any of the waters included in the permit issued to the prior applicant and the right to use such waters under the former permit shall thereupon be forfeited. Provided, that the state engineer shall allow an extension of time on request of the prior applicant, equal to the time during which work was prevented by the operation of law, beyond the power of the said applicant to avoid.

§ 25. Completion of Work] On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the state engineer shall cause the work to be inspected, after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, their safety and efficiency. If not properly and safely constructed the state engineer may require the necessary changes to be made within a reasonable time, not to exceed six months, and shall not issue his certificate of completion until such changes are made. Failure to make such changes shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the

satisfaction of the state engineer, and applications subsequent in time shall have the benefit of such postponement of priority. Provided, that for works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding ten feet in the extreme height from the foundation, the state engineer may, in his discretion, accept the report of an inspection by a reputable hydraulic engineer.

§ 26. Certificate of Completion] When the works are found in a satisfactory condition, after inspection the state engineer shall issue his certificate of construction, setting forth the actual capacity of the works and such limitations upon the water rights as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

§ 27. • Inspection of Works] If the state engineer shall, in the course of his duties, find that any works used for the storage, diversion or carriage of water are unsafe and a menace to life or property, he shall at once notify the owner or his agent, specifying the changes necessary and allowing a reasonable time for putting the works in a safe condition, not exceeding three months. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works; and if not paid by him within thirty days after the decision of the state engineer, shall be a lien against any property of such owner, to be recovered by suit instituted by the state attorney of the county at the request of the state engineer. The state engineer may, when in his opinion necessary, inspect any works under construction for the storage, diversion, or carriage of water, and require any changes necessary to secure their safety; and the fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided herein. Provided, that any works constructed by the United States, or by its duly authorized agencies, shall not be subject to such inspection while under the supervision of officers of the United States.

§ 28. Use of Unsafe Works] The use of works for the storage, diversion, or carriage of water, at any time after an inspection thereof by the state engineer and receipt of notice from him that the same are unsafe for the purpose for which they are used, until the receipt of notice from him that in his opinion they have been made safe, shall be a misdemeanor, and it shall be the duty of the state engineer to give prompt notice to the state's attorney of the county in which such works are located in case of such violation. The state's attorney shall at once proceed against the owner, and all parties responsible therefor.

§ 29. Application to Beneficial Use] On or before the date set

for the application of the water to a beneficial use, the state engineer shall cause the works to be inspected, after due notice to the owner of the permit. Upon the completion of such inspection, the state engineer shall issue a license to appropriate water to the extent and under the conditions of the actual application thereof to beneficial use, but in no manner extending the rights described in the permit. Provided, that the inspection to determine the amount of water applied to beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the state engineer.

§ 30. Extension of Time] The state engineer shall have power to extend the time for the completion of construction, or for application to beneficial use, for three years and two years, respectively, but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, or by operation of law beyond the power of the applicant to avoid.

§ 31. A. Any person, association or company who may have or hold any possession, right or title to any agricultural lands within the limits of this state shall be entitled to the usual enjoyment of the waters of the streams or creeks in said state and for the purpose of directing flood waters for irrigation or for stock purposes any person, association or company may build or construct dams across any dry draw or water course within the state and such person, association or company shall have the right of way through, and over any tract or piece of land for the purpose of conveying said water by means of ditches or flume.

B. Any prson or persons, association or company appropriating the waters of any dry draw or water course within this state shall within sixty days after the posting of the notice hereinafter provided for, build and construct the dam for the purpose of catching and diverting the said waters and proceed with due diligence to divert the same for beneficial purposes.

C. Any person or persons, association of company wishing to avail themselves of any of the rights hereinbefore mentioned shall file a location certificate with the register of deeds of the county in which the right is situated; a copy of such certificate shall be posted at or near the head of the ditch or flume and shall contain the name of the locaters, the date of location, the amount of water claimed and the purposes for which it is to be used and a copy of said notice be mailed to the state engineer.

D. The words dry draw or water course used herein are defined to mean any ravine or water course not having a flow of at least twenty miner's inches of water, flowing during the greater part of the year. Any person or persons, association or company holding a right under section 31 of this act shall not be subject to the rules and regulations of the state engineer, or under his jurisdiction.

§ 32. Assignment of Permit or License] Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the state engineer, upon assignment. Provided, that no right to appropriate water for irrigation purposes shall be assigned, or the ownership thereof in any wise transferred, apart from the land to which it is appurtenant, except in the manner especially provided by law. Provided, further, that the transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes.

§ 33. Transfer of Water Records] It shall be the duty of the register of deeds of each county in the state, as soon as possible, but within six months after the passage of this act, to prepare and forward by express or registered mail, at the expense of the county, to the state engineer, a transcript of all records relating to water rights. Provided, that they may forward any original documents in their offices which have been duly recorded. The state engineer shall classify and arrange such records to conform to stream systems, and shall send copies thereof relating to each water division to the water commissioner thereof. He shall likewise forward to the water commissioner copies of all records, permits and licenses to appropriate water relating to his division, and shall advise him of all acts and decisions of the state engineer's office affecting the apportionment of waters in his division.

§ 34. Referee in Water Suits] In any suit concerning water rights the court may appoint a referee or referees, not exceeding three, to take testimony and report upon the rights of the parties as in equity cases.

§ 35. Attorney General and State's Attorneys Advisers of State Engineer] The attorney general and the state's attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with his work, without other compensation than their salaries as fixed by law, except when otherwise provided. The state's attorney shall not be interested directly or indirectly in any water right on any stream system in which he shall appear as an advisor.

§ 36. Charge for Carrying and Delivering Water] The owner or owners of any works for the storage, diversion, or carriage of water, which contain water in excess of their needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus, at reasonable rates for storage, or carriage, or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal of such owner or

owners to deliver any such surplus water at reasonable rates as determined by the state engineer, they may be compelled to do so by the circuit court for the county in which the surplus water is to be used.

§ 37. Appropriation of Water by the United States] Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the state, shall notify the state engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated at the date of such notice, shall not be subject to further appropriation under the laws of this state for a period of three years from the date of said notice, at which time the proper officers of the United States shall file plans for the proposed work in the office of the state engineer for his information, and no adverse claim to the use of the waters required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the state, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States, thereunto duly authorized. Provided, that in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the state engineer shall become public waters, subject to general appropriations.

Water Commission.

§ 38. Water Divisions] The state shall be divided into water divisions as follows:

Division 1. Butte, Meade and Lawrence counties.

Division 2. All counties west of the Missouri river except Butte, Meade and Lawrence counties.

Division 3. All counties east of the Missouri river.

§ 39. Water Commissioners.] A water commissioner shall be appointed by the governor for each water division, as hereinbefore established, to serve for a term of six years, or until his successor shall have qualified, and shall be subject to removal by the governor. Provided, that the water commissioners first appointed after the passage of this act shall serve for the terms specified as follows:

Water division No. 1, six years; water division No. 2, four years; water division No. 3, two years. Provided, further, that prior to any appointment or during any temporary vacancy in the office of water commissioner, the powers and duties of such water commissioner shall devolve on the state engineer until the office has been regularly filled.

§ 40. Duties of Water Commissioners] Each water commissioner shall have the supervision of the apportionment of water in his division, according to the licenses issued by the state engineer and the adjudications of the courts, and shall perform such other duties as may be prescribed by the state engineer. Each commissioner shall have the custody of the records relating to his division, which shall be

public records, and shall be transmitted to his successor in office. Each water commissioner before entering upon the duties of his office shall take and subscribe an oath of office and give a bond with good and sufficient sureties, to be approved by the supreme court, in the sum of two thousand dollars, for the faithful performance of the duties of his office, which oath and bond shall, upon approval, be filed in the office of the secretary of state.

§ 41. Board of Water Commissioners] The water commissioners of all the water divisions, together with the state engineer, who shall be president thereof, shall constitute the board of water commissioners, which shall have general supervision of the apportionment of the waters of the state. The board shall adopt general rules and regulations to govern its proceedings and the operations in the various divisions. The state engineer shall have a vote on all matters coming before the board, except appeals authorized by law, from his acts as state engineer. The board shall meet on the first Monday in March of each year, at the office of the state engineer, and at such other times and places as may be agreed upon by a majority of its members, whereupon the state engineer shall give notice of such meeting to all members.

§ 42. Pay of Water Commissioners] The water commissioners shall be paid from the state treasury out of the moneys appropriated for such purposes at the rate of five dollars per day for the time actually engaged in official duties, not exceeding one hundred days in one year. They shall also be paid actual and necessary traveling expenses while away from their homes on official business.

§ 43. Water Districts] The state engineer shall, from time to time, as may be necessary for the economical and satisfactory apportionment of the water, divide each water division into water districts, to be designated by names and comprise as far as possible one or more distinct stream systems in each district. The districts may be changed from time to time as may, in his opinion, be necessary for the economical and satisfactory apportionment of the water.

§ 44. Appeals to State Engineer] Any person may appeal from the acts or decisions of the water commissioner to the state engineer, who shall promptly and at a stated time and place, to be fixed by him, upon due notice to the parties, hear and determine the matter in dispute, and his decision shall be final, unless an appeal is taken to the courts within thirty days.

Miscellaneous Provisions.

§ 45. Units of Measurement] The standard of measurement of the flow of water shall be the cubic foot per second of time; and the standard of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred and sixty cubic feet. The miner's inch shall be regarded as one-fiftieth of a cubic foot per

second in all cases, except when some other equivalent of the cubic foot per second has been specially stated by the contract, or has been established by actual measurement or use.

§ 46. Abandonment] When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

§ 47. Amount of Water for Irrigation] In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time in each year.

§ 48. Water Appurtenant to Land for Irrigation Purposes] All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used. Provided, that if for any reason it should at any time become impracticable to use all or any part of said water beneficially or economically for the irrigation of any land to which the right of use of the same is appurtenant, all or any part of said right may be severed from said land, and simultaneously transferred and become appurtenant to other land without losing priority of right theretofore established, if such change can be made without detriment to existing rights, on the approval of an application of the owner to the state engineer. Before the approval of such application the applicant must give notice thereof by publication, in the form required by the state engineer, once a week for four weeks in a newspaper of general circulation in the stream system in which the tracts of land are located. Upon receipt of the proofs of publication, the state engineer shall render his decision thereon in writing, which shall be final, unless some party interested in the same source of water supply shall, within sixty days, bring appropriate action in the circuit court of the county in which the land is located, for a review of such decision. If the owner of the land to which water has become appurtenant abandons the use of such waters upon said land, said waters shall become public waters, subject to general appropriation.

§ 49. Change of Use or Place of Diversion] Any appropriator of water may use the same for other than the purpose for which it was appropriated, or may change the place of diversion, storage or use, in the manner and under the conditions prescribed in sections twenty and forty-seven of this act.

§ 50. Measuring Devices] Every ditch owner shall construct and maintain a substantial headgate at the point where the water is diverted, and shall construct a measuring device, of a design approved by the state engineer, at the most practicable point or points for meas-

uring and apportioning the water as determined by the state engineer. The state engineer may order the construction of such device by the ditch owner, and if not completed within twenty days thereafter, the water commissioner shall, upon instructions from the state engineer, refuse to deliver water to such owner. The taking of the water by such ditch owner until the construction of such device and the approval thereof by the state engineer, shall be a misdemeanor. Such devices shall be so arranged that they can be locked in place, and when locked by the water commissioner or his authorized agent, for the measurement or apportionment of water, it shall be a misdemeanor for any unauthorized person to interfere with, disturb or change the same, and the use of water through such device after having been interfered with, disturbed or changed, shall be *prima facie* evidence of the guilt of the person benefited by such interference, disturbance or change.

§ 51. Unlawful Interference with Rights to Use of Water] Any person, association or corporation interfering with or injuring or destroying any dam, head gate, weir, bench mark or other appliance for the diversion, carriage, storage, apportionment or measurement of water, or for any hydrographic survey, or who shall interfere with any person or persons engaged in the discharge of duties connected therewith, shall be guilty of a misdemeanor and shall also be liable for the injury or damage resulting from such unlawful act. The water commissioner or any authorized assistant within his division, shall have power to arrest any person offending against the provisions of this section, and deliver him to the nearest peace officer of the county. It shall be the duty of the person making the arrest to make complaint at once before the court having jurisdiction thereof. The state engineer, the water commissioners, and their authorized assistants and agents, may enter upon private property for the performance of their respective duties, doing no unnecessary injury thereto.

§ 52. Unlawful Use of Water and Waste] The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, or the public shall be a misdemeanor. It shall also be a misdemeanor to begin or carry on any construction of works for storing or carrying water until after the issuance of a permit to appropriate such waters, except in the case of construction carried on under the authority of the United States.

§ 53. Bridges Over Ditches and Canals] The owner or owners of any ditch, canal or other structure for carrying or storing water, shall construct a substantial bridge where the same crosses any highway or publicly traveled road, with a passageway not less than fourteen feet wide; or reconstruct the road in a substantial manner and in a convenient location for public travel. Any violation of the provisions of this section shall be a misdemeanor. The county commissioners shall be authorized to construct such bridge or road, if not built by the owner of the work within three days after the obstruction

of the road, and may recover the expense thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The county commissioners may make reasonable requirements as to the size and character of such bridges along public highways, or for the necessary reconstruction of roads, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the county commissioners. The owner or owners of any ditch, canal or other structure for carrying or storing water shall keep the same in good repair at the crossing of any highway or publicly traveled road or at other places where the water therefrom may flow over or in any wise injure any road or highway; and the county commissioners shall require necessary repairs for the protection of the roads to be made or shall make them at the expense of the owners of such works and collect the expense thereof and costs as herein provided.

§ 54. Obstructing Works] Whenever any appropriator of water has the right of way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violation of the provisions of this section shall be a misdemeanor.

§ 55. Penalty for Misdemeanors Under this Act] All violations of the provisions of this act, declared herein to be misdemeanors, shall be punished by fine not exceeding one hundred dollars nor less than twenty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment; and any justice court of the county in which such misdemeanor has been committed shall have jurisdiction thereof.

§ 56. Liens on Land] All liens on land, provided for in this act, shall be superior in right to all mortgages or other incumbrances placed upon the land and the water appurtenant thereto or used in connection therewith, after the passage of this act.

§ 57. Seepage Water] In the case of seepage water from any constructed works, any party desiring to use the same shall make application to the state engineer, as in the case of unappropriated water, and such party shall pay to the owner of such works reasonable charge for the storage or carriage of such water in such works. Provided that the appearance of such seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such works.

§ 58. Right of Way Over State Lands] There is hereby granted over all school and public lands now or hereafter belonging to the state, a right of way for ditches or canals and for tunnels, tramways and telephone and electrical transmission lines, constructed by authority of the United States. All conveyances and contracts of sale

of school and public lands made after the taking of effect of this act, except patents or deeds to lands sold prior thereto, shall contain a reservation of such right of way. Purchasers of school and public lands shall have the right to obtain water from any irrigation system, parts of which may be located on said school and public lands. Provided such lands are purchased within five years after the construction of any such irrigation system.

§ 59. Disposition of State Lands] No lands belonging to the state within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold, except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawals shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works, shall be sold to the United States at the lowest price authorized by law. Provided, however, that prior to the construction of any canal or ditch or water way over or across any school or public lands of this state under the provisions of this act, there shall be filed in the office of the commissioner of school and public lands a map or plat of said proposed canal, ditch or water way clearly indicating the course of the same and the acreage required in its construction and the amount of land proposed to be taken out of each smallest legal subdivision of said school or public lands in the construction of the canal, ditch or water way.

§ 60. Repeal] All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

§ 61. Emergency] Whereas an emergency exists, this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1907.

LEGAL HOLIDAYS

CHAPTER 181

(H. B. 15)

RELATING TO LEGAL HOLIDAYS

AN ACT to Amend Sections 2458 and 2459 of the Revised Civil Code of 1903.
Designating Legal Holidays.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 2458 of the Revised Civil Code of 1903 be amended to read as follows:

Section 2458. That the first day of every week, known as Sunday; the first (1st) day of January, commonly known as New Years day; the twelfth (12th) day of February, the anniversary of the birthday of Lincoln; the twenty-second (22d) day of February, the anniversary of the birthday of Washington; the thirtieth (30th) day of May, commonly known as Memorial day; the fourth (4th) day of July, commonly known as Independence day; the first Monday in September, commonly known as Labor day (unless some other day should be appointed by the governor); the 25th day of December, commonly known as Christmas day; and every day on which an election is held throughout the state, and every day appointed by the president of the United States, or by the governor of this state for a public fast, thanksgiving or holiday, shall hereafter be observed in this state as a legal holiday. Aside from Sundays, the observance of which is provided for in the Penal Code of this state, no public business, except in case of necessity, shall be transacted on any one of said days, and no legal process in civil cases shall be served on any of said days.

§ 2. That section 2459 of the Revised Civil Code of 1903 be amended to read as follows:

Section 2459. That if the twelfth and twenty-second days of February or the fourth day of July falls upon a Sunday, the Monday following is a legal holiday and shall be so observed.

Approved February 12, 1907.

LEGISLATIVE LOBBY

CHAPTER 182

(H. B. 10)

RELATING TO LEGISLATIVE LOBBYING

AN ACT Entitled an Act to Regulate the Employment of Legislative Lobby Counsel and Agents; to Prohibit Legislative Counsel and Agents From Attempting to Influence Members of the Legislature Other than by Appearance Before Committees Thereof; to Provide for the Return of Legislative Expenses and Prescribing Penalties and Fixing Punishment for the Violation of the Provisions Thereof.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Every person, corporation or association which employs any person to act as counsel or agent to promote or oppose in any manner, the passage by the legislature of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the state, or to act in any manner as a legislative counsel or agent in connection with any such legislation, shall, within one week after the date of such employment, cause the name of the person so employed or agreed to be employed, to be entered upon a legislative docket as hereinafter provided. It shall also be the duty of the person so employed to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed, either by the employer or employee.

§ 2. The secretary of state shall prepare and keep two legislative dockets, in conformity with the provisions of this act, one of which shall be known as the docket of the legislative counsel before committees, and the other as the docket of legislative agents. In the docket of legislative counsel shall be entered the names of counsel or persons employed to appear at a public hearing before a committee of the legislature for the purpose of making an argument or examining witnesses, and also the names of any regular legal counsel of any person, corporation or association who act or advise in relation to legislation; in the docket of legislative agents shall be entered the names of all agents employed for any purpose in connection with any legislation included within the terms of section 1 of this act. In such dockets shall be entered the names and business address of the employer, the name, residence and occupation of the person employed,

the date of the employment or agreement therefor, the length of time the employment is to continue, if such time can be determined, and the special subject or subjects of legislation, if any, to which the employment relates. Such dockets shall be public records and open to the inspection of any citizen upon demand at any time during the regular business hours of the office of the secretary of state.

§ 3. Any person, corporation or association employing any legislative counsel or agent shall, whenever further subjects of legislation are introduced or arise which such counsel or agent is to promote or oppose, make or cause to be made additional entries opposite his or its name in the appropriate docket, stating such special employment and specifically referring to the petitions, orders, bills, or other subject of legislation to which the same relates, and such entries shall also be made opposite the names of such counsel or agents, in such manner that such entries shall show all the subjects of legislation in relation to which any counsel or agent is employed. No person shall appear as counsel before any committee of the legislature or of either branch thereof, or act as agent in respect to any legislation coming within the terms of section 1 of this act, unless his name appears upon the docket of legislative counsel or agent as employed in respect to such matter as above provided. No person, private or public corporation or association shall, directly or indirectly, employ any person as legislative counsel or agent in respect to any legislation coming within the terms of section 1, unless the name of such person is duly entered on the legislative docket as provided by this act. No person shall be employed as a legislative counsel or agent for a compensation dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the legislature, or of either branch thereof, or of any committee thereof. No person whose name is entered on the docket of the legislative counsel shall render any service as legislative counsel or agent otherwise than by appearing before a committee, as aforesaid, and by doing work properly incident thereto, or by giving legal advice in the case of regular legal counsel of corporations or associations, unless his name is also entered on the docket of legislative agents.

§ 4. Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the secretary of state within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them.

§ 5. It shall be unlawful for any person employed for a pecuniary consideration to act as legislative counsel or legislative agent, as defined by this act, or any officer, agent or employe of any person, corporation or association, whose interests will probably be pecuniarily affected by any proposed legislation, to attempt to influence any member of the legislature to vote for or against any measure

pending therein, or for or against any candidate for any office to be elected or appointed by the legislature, or to attempt to influence any officer of either house of the legislature in naming of members and officers of committees, or in the performance of any of his duties, or to attempt to influence or control the action of any member in relation to any matter coming before the legislature, or any of its committees, otherwise than by appearing before the regular committees thereof when in session, or by newspaper publication or by public addresses, or by written or printed statements, arguments or briefs, delivered to each member of the legislature. Provided, that before delivering such statements, arguments or briefs, twenty-five copies thereof shall be first deposited with the secretary of state. No person, officer, agent, appointee or employe in the service of the state of South Dakota or of the United States shall attempt to influence any member of the legislature to vote for or against any measure pending therein affecting the pecuniary interests of such person, excepting in the manner authorized therein in the case of legislative counsel and legislative agents.

§ 6. It shall be unlawful for any person employed for a pecuniary consideration to act as legislative counsel or legislative agent as defined by this act to go upon the floor of either house of the legislature reserved for the members thereof while in session, except upon the invitation of such house.

§ 7. Within thirty days after the final adjournment of the legislature every person, corporation or association, whose name appears upon the legislative dockets of the session, shall file with the secretary of state a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in the case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation or association, in connection with the employment of legislative counsel or agents, or in connection with promoting or opposing in any manner the passage by the legislature of any legislation coming within the terms of section 1 of this act. Corporations and individuals within the provisions of this act shall render such accounts in such form as shall be prescribed by the secretary of state, and such reports shall be open to public inspection.

§ 8. Any person, corporation or association violating any provision of this act shall for such offense be fined not less than two hundred dollars nor more than five thousand dollars. Any person employed as legislative counsel or agent who shall fail to comply with any provision of this act, or who shall act as legislative counsel or agent contrary to the provisions of this act, shall be fined not less than one hundred dollars nor more than one thousand dollars, and shall be disbarred from acting in the capacity of a legislative counsel or agent for the period of three years from the date of such conviction. It shall be the duty of the attorney general, upon information, to bring prose-

cutions for the violation of the provisions of this act.

§ 9. This act shall not apply to any municipality or other public corporation.

§ 10. An emergency is hereby declared to exist and this act shall be in force from and after its passage and approval.

Approved, February 7, 1907.

LIBRARIES

CHAPTER 183

(S. B. 67)

DEFINING THE SUPREME COURT LIBRARY

AN ACT Defining the Supreme Court Library and Providing for its Custody and Care.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Supreme Court Library Defined] The supreme court library shall consist of all constitutions, statutes, session laws, court reports, digests, text books and other legal publications now owned by the state and under the control of the judges of the supreme court, or which may hereafter be acquired by purchase, exchange or otherwise.

§ 2. Care and Custody of] The supreme court library shall be under the exclusive control and supervision of the judges of the supreme court, who are hereby authorized to make such rules and regulations regarding its use as they may deem proper.

§ 3. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 25, 1907.

CHAPTER 184

(H. B. 162)

RELATING TO METHOD OF RAISING FUNDS FOR FREE LIBRARIES

AN ACT Entitled an Act to Amend Section 1527 of the Political Code of 1903, Relating to the Method of Providing Funds for Free Libraries.

Be it Enacted by the Legislature of the State of South Dakota:

That section 1527 of the Political Code of 1903 be and the same is hereby amended to read as follows:

§ 1527. Amendment] The common council of every city of the third class, board of trustees of every incorporated town and township, board of every township in towns or townships containing over five hundred inhabitants shall have power to establish and maintain a public library and reading room, and for such purpose may annually levy and cause to be collected, as other taxes are collected, a tax not to exceed one and one-half mills on each dollar of taxable property of such city, town or township, to constitute the library fund, which fund shall be kept separate and apart from the other money of the city, and shall be used exclusively for such purpose; provided, that no library shall be established without first submitting it to a vote and be approved by a majority of the electors of such city, town or township, who shall vote on such question at any annual or general election at which it may be submitted to a vote.

Approved February 25, 1907.

CHAPTER 185

(H. B. 150)

RELATING TO THE STATE LIBRARY

AN ACT Entitled an Act Establishing a Division of Legislative Reference in the State Library.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Librarian] The state librarian is hereby directed to establish in the state library a division of legislative reference, in which he shall provide the reports of the various officers and boards of this state and as far as may be of other states, and such other material upon economic and sociological subjects as he may be able to provide, and shall index and classify the same and make the information therein available for the use of the state legislature, and shall, as required, provide for the use of members of the legislature such information and assist in drafting bills and in every reasonable way make the division useful in the preparation of legislation.

§ 2. The various departments, officers and boards shall provide copies of their reports and publications for the legislative division of the state library, and the secretary of state is directed to supply to the same a complete set of the statutes and session laws of the state and of the reports of the supreme court.

§ 3. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved February 18, 1907.

MAGISTRATES

CHAPTER 186

(H. B. 187)

RELATING TO MAGISTRATES

AN ACT Entitled an Act Amending Section 91 of the Revised Code of Criminal Procedure of 1903, Relating to Magistrates.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 91 of the Revised Code of Criminal Procedure of 1903, be and the same is hereby amended to read as follows:

Section 91. The following persons are magistrates:

1. The judges of the supreme court.
2. The circuit judges.
3. The county judges.
4. Justices of the peace.
5. Police and other special justices appointed or elected in a city, town or village.

Approved March 5, 1907.

MEMORIAL DAY

CHAPTER 187

(H. B. 267)

AUTHORIZING APPROPRIATION OF MONEY FOR EXPENSES IN OBSERVANCE OF MEMORIAL DAY

AN ACT Entitled an Act Authorizing City Councils and School Boards and County Commissioners to Make Appropriations to Defray the Necessary Expenses Incident to the Observance of Memorial Day.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation Authorized] That the city councils of all cities within this state, the school boards of all cities within this state, and trustees and school boards of all towns and villages, and the county commissioners of all counties within this state, are hereby authorized and empowered in their discretion, to appropriate funds for the purpose of defraying the necessary expenses of a proper observance of Memorial Day each year.

§ 2. Emergency] There being no law on this subject, an emergency is deemed to exist, and this act shall take effect from and after its passage and approval.

Approved March 7, 1907.

MORTGAGES

CHAPTER 188

(H. B. 282)

RELATING TO CHATTEL MORTGAGES

AN ACT to Amend Section 2095 of the Civil Code of 1903, Relating to Chattel Mortgages.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Assignment Required] That section 2095 of the Civil Code of 1903 be, and the same is hereby amended to read as follows:

Section 2095. The register of deeds of each of the several counties must receive and file all such instruments as are offered to him, and must keep the same in his office in regular and orderly file, for the public information, and must not permit them or any of them to be removed from his office until cancelled. Every such mortgage may be cancelled by the register of deeds upon the presentation to him of a receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof, signed by the mortgagee or assignee. Provided, that all assignments of chattel mortgages shall be in writing, signed by the mortgagee in the presence of two persons, who must sign the same as witnesses thereto, which assignment shall be filed in the office of the register of deeds, as heretofore provided in this section for filing the original mortgage, and thereafter the assignee shall be authorized and required as provided in section 2094, to satisfy such mortgage. Provided, further, that the register of deeds shall be entitled to and receive a fee of ten cents for filing each assignment of a chattel mortgage.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 189

(S. B. 193)

RELATING TO CERTIFICATES OF MORTGAGE FORECLOSURE SALES

AN ACT to Amend Section 645 of the Code of Civil Procedure of the State of South Dakota, Revision of 1903, Relative to Certificates of Mortgage Foreclosure Sales.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 645 of the Code of Civil Procedure of the state of South Dakota, revision of 1903, be amended to read as follows:

Section 645. Certificate—What to Contain] Whenever any real property shall be sold by virtue of a power of sale contained in any mortgage, the officer or person making the sale shall give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.

Which certificate must be executed and acknowledged and shall be filed and recorded in the office of the register of deeds where the mortgage is recorded within ten days from the date of sale, and shall

have the same validity and effect as a certificate of sale of real property under execution.

§ 2. Repeal] All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved March 3, 1907.

CHAPTER 190

(H. B. 217)

RELATING TO ASSIGNMENT OF REAL ESTATE MORTGAGES

AN ACT to Amend Section 2056 of the Civil Code of 1903, Relating to the Assignment of Real Estate Mortgages.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 2056 of the Civil Code of 1903 be amended to read as follows:

Section 2056. An assignment of a mortgage may be recorded in like manner as a mortgage, when it is acknowledged according to the statute in relation to proof of instrument, and contains the name of the mortgagor, the mortgagee, the assignee and his post office address, the date of the mortgage, the date of recording the mortgage, the county and state, and book and page where recorded and a full description of the premises as described in the mortgage—and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 1, 1907.

MUNICIPAL COURTS

CHAPTER 191

(S. B. 245)

PROVIDING FOR MUNICIPAL COURTS

AN ACT Entitled an Act Providing for Municipal Courts, Defining the Jurisdiction Thereof, Providing for the Practice Therein and Fixing the Terms and the Salary of the Judges Thereof.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Court Created] In addition to the courts now existing

there is hereby created a court of record to be known as the municipal court, the name of which shall be "The Municipal Court of the City of"

§ 2. What Cities May Establish] Any city in this state which has or shall have a population of five thousand inhabitants, or over, may establish such court.

§ 3. Question Submitted] Whenever of the legal voters of any city having a population of five thousand inhabitants or over a number equal to ten per centum of the number of votes cast for mayor at the last previous municipal election at which a mayor was elected in such city shall petition the mayor and council thereof to submit the question whether such court shall be established to a vote of the electors of such city. It shall be the duty of such mayor and council or other governing body to submit such question accordingly to an election held within twenty days from the date of the filing of such petition with the auditor of such city, and to appoint a time and place at which such vote may be taken, and to designate the persons who shall act as judges at such election, but such question shall not be submitted oftener than once in any calendar year.

§ 4. Elections—How Held] Excepting as herein provided such election shall be held in the manner provided by law for holding municipal elections in cities of the class to which such city may belong. The mayor of such city shall give at least ten days' notice of such election, by publishing a notice thereof in the official newspaper of such city. The ballots to be used at such election shall be in the following form: "For Establishment of a Municipal Court" or "Against Establishment of a Municipal Court." The judges of such election shall make returns thereof to the city council or other governing body, whose duty it shall be to canvass such returns and cause the result of such canvass to be entered upon the records of such city. If a majority of the votes cast at such election shall be for the establishment of such court, such court shall thenceforth be deemed to be established under this act as soon as a judge thereof shall have been elected and shall have qualified.

§ 5. Rooms and Supplies] The city council or other governing body of the city shall establish, furnish and maintain suitable rooms and offices for said court and the officers thereof, and shall also provide for the use of the court all necessary journals, order books, judgment dockets, and fee books and such other supplies as may be necessary. Said court shall have and use a seal having on the face thereof the words "municipal court" and the name of the city and of this state.

§ 6. Definitions of Words and Terms] When used in this act, unless otherwise stated, the word "court" shall mean the municipal court; the word "judge" shall mean the judge of the municipal court and may include said court; the word "city" shall mean the city in

which the municipal court is established and organized; the word "county" shall mean the county in which the city in which the municipal court is organized and established is situated the term "circuit court" shall mean the circuit court of such county; the word "mayor" shall mean the mayor of the city in which the municipal court is organized and established and shall include, in case of his absence or inability to act, the president of the city council or the person who is at the time performing the duties of the office of mayor, and in cities in which there is no mayor shall mean the president or chairman of the board of commissioners or trustees or council or the person performing his duties; the term "chief of police" shall include in cities which have no chief of police the marshal or chief police officer of the city; the term "city auditor" shall include the city clerk in cities where there is no city auditor, and the word "charter" shall include the laws under which the city is organized.

§ 7. Election of Judge] In case the vote upon the establishment of said court shall be in the affirmative, the judge of the court shall be elected at a special city election to be held on the next succeeding Tuesday in June and every four years thereafter, for the term of four years, beginning on the first day of the month next following the election and until his successor qualifies. Notice of such election shall be given and such election shall be held and the result thereof determined in the manner in which annual municipal elections are noticed and held and the result thereof determined in such city. A vacancy in the office of judge shall be filled by the mayor and city council or other governing body for the unexpired term, provided, however, that if such unexpired term shall be for more than one year a special election to fill such vacancy shall be called by the city council or other governing body and held within ninety days next following the happening of such vacancy, in which event the judge so elected shall assume the duties of his office on the second Monday following such election. No election under this act shall be held on the same date any other election is held in the city. Whenever it shall appear from the last preceding state or federal census that any city in this state has attained a population of five thousand inhabitants or over a municipal court for such city may thereupon be established and the judge thereof elected as herein provided, who shall hold office until the election and qualification of his successor who shall be elected at a special election to be called and held in the manner hereinbefore provided. Such court shall not cease even if the population of such city shall thereafter fall below five thousand inhabitants.

§ 8. Salary of Judge] In cities having a population of five thousand inhabitants the judge shall receive in full compensation for his services the sum of twelve hundred dollars per annum, and for each additional one thousand inhabitants or major fraction thereof an ad-

ditional sum of one hundred fifty dollars per annum: Provided, that in no case shall such salary exceed two thousand dollars. Such salary shall at all times be determined by the last state or federal census. The salary shall be paid quarterly on the first days of January, April, July and October and shall be paid one-half from the city treasury and one-half from the treasury of the county.

§ 9. Qualifications of Judge] The judge of a municipal court shall be at least twenty-five years of age and a citizen of this state, shall have been licensed to practice as an attorney and counsellor at law in the courts of this state, shall be an elector of the city in which the court is established and shall have been engaged in the active practice of law in this state for at least three years next preceding his election. Before entering upon the duties of his office he shall take and subscribe and file in the office of the city auditor the following oath: "I do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States and the constitution of the state of South Dakota, and that I will faithfully discharge the duties of the office of judge of the municipal court of the city of in the state of South Dakota, according to the best of my ability." He shall also give a bond to the state of South Dakota in the sum of five thousand dollars for the faithful discharge of his duties, which bond must be approved by the city council and filed in the office of the city auditor. The effect of the qualification and entering upon his duties of the judge of the municipal court of any city in this state shall be to abolish thereupon and forthwith the offices of police justice of the peace and of city justice of the peace of such city. The judge may at any time, after due hearing before the governor, be removed by the governor, upon complaint in that behalf made by any citizen of the state or any bar association within the state, for any cause which would be sufficient to disbar the judge from the practice of law in the courts of the state, for misconduct in office, for gross incapacity, or for habitual intemperance, of all of which the governor shall be the judge; but the action of the governor may be reviewed and affirmed or reversed by the supreme court of the state, and the practice and procedure on such review shall be prescribed by said supreme court. If any judge shall be disbarred from the practice of law in the courts of this state, such disbarment shall ipso facto work his removal from the office, and a vacancy shall be deemed to exist.

§ 10. Jurisdiction—Jurisdiction in Civil Actions] The jurisdiction of every municipal court shall be co-extensive with and limited to the county in which the city is situated. It may try and determine civil actions:

1. Arising on contract for the recovery of money only when the amount claimed shall not exceed five hundred dollars.
2. For damages for injury to the person or to real property,

or for taking, detaining or injuring personal property, when the amount claimed shall not exceed five hundred dollars.

3. For a penalty given by statute not exceeding five hundred dollars or upon a bond conditioned for the payment of money, whatever the penalty thereof, when the amount claimed shall not exceed five hundred dollars.

4. On an official bond, or on any bond or undertaking taken in a municipal court, if the penalty shall not exceed five hundred dollars.

5. For forcible entry and detainer or detainer only of real property, whether involving the title to or boundaries of such property or not.

6. The court may take and enter judgment by confession to an amount not exceeding five hundred dollars.

7. The assertion of a counterclaim in excess of five hundred dollars or of an equitable defense in any action of any character shall not serve to deprive the court of jurisdiction, and the court shall have jurisdiction to try and determine such action and enter judgment therein, notwithstanding the assertion of such counterclaim or equitable defense.

Costs shall not be considered part of the amount determining the jurisdiction of the court.

§ 11. Jurisdiction—Equitable] Co-extensive with the limits of the county in which the city is situated, the court may try and determine actions for the foreclosure of chattel mortgages or other liens upon personal property, in which actions the amount of the relief demanded does not exceed five hundred dollars.

§ 12. Jurisdiction—Criminal] The court shall have criminal jurisdiction to try and determine all cases of misdemeanor committed within the county in which the city is situated; and as to all felonies arising or committed within such county, the judge of the court shall have the power of a committing magistrate. The judge shall have the power to remit fines, forfeitures and recognizances, and to accept and approve the same, as provided for in the circuit and justice courts. The judge shall fix the amount of bail to be required of the accused, and the clerk shall endorse the same upon the warrant, except that when the warrant is made returnable forthwith it shall not be necessary to fix the amount of bail until the accused is brought into court. Parties may be committed to the city prison or in cases allowed by law, to the county jail for confinement or punishment, at the option of the judge. The court may receive the plea of guilty and pass judgment, or, if the accused will waive a jury and be tried by the court without a jury, the court may, upon notice being first given to the states attorney, try the action and pass judgment, whether in term time or not.

§ 13. Jurisdiction—Exclusive] The court shall have exclusive

original jurisdiction of all cases, both civil and criminal, cognizable before a justice of the peace under the laws of this state in which process shall be served within the city where the court is established, and the court shall also have exclusive original jurisdiction to try and determine all cases, both civil and criminal, arising under the ordinances of such city, and of criminal cases arising under the charter of the city, and within the limits of such city shall have exclusive original jurisdiction in all matters conferred upon police justices of the peace or city justices of the peace as are now or may hereafter be provided by law.

§ 14. Jurisdiction Withheld] Except as provided in subdivision 5 of section 10, no municipal court shall have jurisdiction of civil actions involving the title to or boundaries of real property or of any action:

1. For a divorce.
2. To recover damages for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction or breach of promise to marry.
3. Wherein equitable relief is demanded, except as provided in section 11; and in subdivision 7 of section 10.
4. Against the county in which the city is situated.

Nor shall the court have power to issue writs of habeas corpus, quo warranto, ne exeat, mandamus, prohibition or injunction.

§ 15. Defense in Excess of Jurisdiction—Procedure] When it shall appear and be shown to the satisfaction of the court (such showing to be made in such manner as the judge shall deem proper) that the title to or boundaries of real property is involved in any action other than for a forcible entry and detainer or detainer only, of such property and that in such action it will be necessary to determine the title to or boundaries of such real property, the fact shall be recorded and the clerk shall transmit to the clerk of the circuit court a certified transcript of the record and all papers filed in the action. Thereafter the action shall proceed to judgment in the circuit court as if it had been commenced therein, and the costs shall abide the event. Actions in which the municipal court does not have exclusive jurisdiction, may, by stipulation of the parties thereto, in like manner be transferred to the circuit court.

§ 16. Clerk] The city auditor shall be the clerk of the court, and the deputy city auditor shall be deputy clerk of the court. Neither the clerk nor the deputy clerk of the court shall receive salaries as such, but the city council, or other governing body may increase the salaries of the city auditor and his deputy. All fees earned by the clerk of the court shall be paid into the city treasury. The clerk shall be responsible for all such fees and may demand the same in advance. He shall receive all fines, deposits, penalties and other moneys paid into court and keep detailed accounts thereof. Upon filing

he weekly reports provided for in section 17, he shall pay to the city treasurer all sums then in his hands. All deposits made into court pursuant to the provisions of article 6 of chapter 11 of the Code of Civil Procedure shall be turned over by the city treasurer to such persons or parties as the judge, by order made in the proceeding in which such deposit is made, shall designate. The clerk, in addition to his bond as city auditor, shall give a bond to the state of South Dakota in at least the sum of three thousand dollars, to be approved by the city council or other governing body, conditioned for the faithful discharge of his official duties and for the payment, as required by law or by order of the court, of all moneys coming into his hands.

§ 17. Weekly Report of Clerk] On Monday of each week the clerk shall file with the city treasurer a verified report which must first have been approved by the judge, showing:

1. The names of all persons convicted in such court during the preceding week and the nature of the offense.
2. The fine or other punishment imposed upon each.
3. The amount paid by each and the amount of cash deposited in lieu of bail since his last report.
4. The total amount of money received from all sources during the same period.
5. The names of all persons discharged from jail by order of the court.

An attested copy of said report shall be filed in the office of the city auditor and an attested copy of said report shall be filed in the office of the clerk of the court.

§ 18. Chief of Police] The chief of police of the city shall be the chief bailiff of the court, and his duties and authority in the court and the duties and authority in the court of the other policemen of the city and in executing process shall correspond to those of the sheriff and deputy sheriffs respectively of the county in the circuit court and with process from the circuit court; and the chief of police shall receive the same fees and compensation as the sheriff for like services, provided, however, that he shall receive no per diem for attendance upon the court. All fees of every character earned by the chief of police and the other policemen of the city in the service and execution of process of any kind, including the service of summonses, shall be paid by the chief of police to the clerk of the court and shall be included in the report to be made by the clerk to the city treasurer provided for in section 17, and shall be paid by the clerk to the city treasurer in accordance with section 16. All fees so earned by the chief of police and the other policemen of the city in each week shall be so reported and turned over by the chief of police to the clerk of the court on the Monday following. The chief of police shall be personally responsible for all such fees and may demand the same in advance, provided, however, that all process of the court, including summonses, may be

served by the sheriff of the county or his deputies, or by any county constable of the county, and the fees of the sheriff or county constable for such service shall be the same as the fees allowed by law to the sheriff for the service of process and summonses in the circuit court.

§ 19. Process] All process of the court other than summonses shall be issued and attested by the clerk of the court in the name of the judge thereof, shall have the seal of the court affixed and shall be directed to the chief of police or other policeman of the city or to the sheriff of the county, or to any county constable of the county, and shall be served and returned in the manner and be substantially in the form as is or may be provided for process issuing from the circuit court.

§ 20. Summons] Actions shall be commenced in the same manner in which they are in the circuit court, except as may be herein otherwise provided. The complaint need not be filed upon the issuance of the summons except in such cases as the complaint is now or may hereafter be required to be filed at the commencement of actions in the circuit and justice courts. The summons shall be directed to the defendant and shall require him to answer the complaint and serve a copy of his answer on the plaintiff or his attorney, as the case may be, whose name shall be subscribed to the summons, at a place within this state, to be in the summons specified in which there is a post-office, within ten days after the service of the summons, exclusive of the day of service. In other respects the summons shall be substantially in the form and of the character provided by law for summonses in actions in the circuit court. A copy of the complaint need not be served with the summons except in actions for forcible entry and detainer or detainer of real property, in which actions the complaint shall be verified and a copy thereof shall be served with the summons and in which actions also the summons shall require the defendant to answer the complaint within four days after the service of the summons, exclusive of the day of such service. The summons may be served in the same manner as summonses are served in the circuit court, but no fees shall be taxed and allowed for the service of the summons unless the service be made by the chief of police or other policeman of the city, the sheriff of the county or a county constable.

§ 21. Terms] The court shall be open every day except Sundays and holidays for the hearing of motions, commencement of actions, rendition of judgments by default and the hearing and determination of actions brought on for trial by agreement of parties with the consent of the judge, unless a trial by jury is demanded. The court shall be opened every morning except Sundays and holidays for the hearing and disposition summarily of all complaints made of offenses committed within the city and the county. General terms for the trial of actions in which issue is joined shall be held on the first Tuesday of each month and at such other times as the court may from

time to time prescribe, provided; however, that no such general term need be held during the month of August. In the absence of the judge the clerk may adjourn the term from day to day.

§22. Jury] When actions are assigned for trial any party desiring a jury shall then make his demand therefor or the same shall be deemed to have been waived. Actions in which a jury has been demanded shall be tried in their order, and when a disposition shall have been made of such actions the jury shall be discharged from further attendance at that term. No jurymen shall be detained longer than one week except upon a trial commenced within the first week of his attendance.

§ 23. Selection of Jurors] In order to provide jurymen for the court, the judge and the mayor of the city (or, in his absence or inability to act, the acting mayor) shall, at least five days before any general term is to be held, make out a list of thirty names of persons from the body of the county in which the city is situated qualified to serve as jurors in the circuit court, which list shall be filed with the clerk. From said list there shall be drawn by the clerk and chief of police (or, in the absence or inability of the later to act, by the acting chief of police), at least three days before such general term, the names of twelve persons in the same manner as jurors are now or may hereafter be drawn in the circuit court, who shall thereupon be summoned for attendance at such term by the chief of police as jurors are summoned in the circuit court.

§ 24. Juries—How Constituted] Issues of fact in actions which in circuit court would be triable to a jury, may, on demand of either party, be tried by a jury. In actions in which issues of fact may be so tried by a jury, if the action would otherwise be cognizable before a justice of the peace, the party demanding such trial by jury shall, at least one day before the action is assigned for trial, deposit with the clerk fifty cents for each juror so demanded as a jury fee for the city, which fee shall by the clerk be turned into the treasury of the city. Such jury fee may be taxed as part of the costs of the action. In all actions the jury shall consist of six qualified jurors, unless when a jury is demanded the party at that time shall demand a jury of twelve, and in all civil actions the party requesting a jury of twelve shall, at the time of making such demand, deposit with the clerk the entire additional expense of the additional jurors, which sum shall be fixed by the court and paid to the clerk at the time of making such demand. All deposits of fees for jurors and deposits of additional expense for jurors shall be paid into the treasury of the city. Challenges shall be allowed to the same number, in the same manner and for the same causes as in civil actions in the circuit court. If the judge shall deem proper, when extra jurors are required he shall cause a special venire to issue for such number of extra jurors as he may deem best, the names in such venire to be selected by the judge, or he

may order the chief of police to complete the same from the bystanders. The fees of jurors shall be paid by the city treasurer at the close of the term, upon certificates issued by the judge and the clerk and filed with the city auditor, who shall thereupon issue warrants to the jurors accordingly. The fees of the jurors shall be one dollar per day and mileage as allowed in the circuit court. In all civil actions which would otherwise be cognizable before a justice of the peace, except actions for the forcible entry and detainer or detainer of real property, the verdict may be rendered by three-fourths of the jury in the following manner; when the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. If one-fourth or more of the jury disagree, they must be sent out again. If three-fourths or more of the jury agree to the verdict, it shall be the verdict of the jury and so recorded, and if neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or the clerk asking each juror if it is his verdict. If more than one-fourth of the jury answer in the negative, the jury must be sent out for further deliberation.

§ 25. Costs and Disbursements] In all actions which would otherwise be cognizable before a justice of the peace, the prevailing party shall be entitled to costs and attorneys fees to the same amount as are allowed in justices courts, except that in lieu of justices' fees the fees of the clerk of the court, which shall be the same as in the circuit court, shall be allowed and the fees for jurors shall be as in this act provided. In all other actions the prevailing party shall be entitled to and allowed costs of the same character and to the same amount as in actions in the circuit court. If a defendant shall settle an action before he has appeared therein, he shall not be liable for any costs except the fees for the service of the summons or other process and such fees of the clerk of the court as may have been incurred. In actions prosecuted by the city attorney for the violation of city ordinances or of offenses arising under the city charter, if unsuccessful, the city shall pay all costs.

§ 26. Appeals] All appeals from judgments or orders of said court shall be taken to the supreme court in the same manner and under the same restrictions, within the same time and with the same effect as appeals are taken from the circuit court to the supreme court, provided, however, that in actions which would otherwise be cognizable before a justice of the peace an appeal may only be taken to the circuit court in the manner provided by the Justice's Code, and in all actions which would be triable to a jury an appeal may be taken to the circuit court and a new trial had therein, which appeal shall be

taken in the same manner in which appeals are taken from a justice of the peace to the circuit court. In all appeals to the circuit court the clerk shall transmit to the clerk of the circuit court a certified transcript of the docket and all papers filed in the action. Thereafter the action shall proceed to judgment in the circuit court as if it had been commenced therein, and the costs shall abide the event. Nothing herein contained shall be construed to prevent or limit the right of appeal from the circuit court to the supreme court. The court shall have jurisdiction to open defaults, to grant new trials, to affirm, modify or set aside judgments in the same manner in which the same may be done in the circuit court. Appeals from the municipal court shall be allowed to the supreme court in criminal actions in all cases where an appeal is allowed from the circuit court.

§ 27. Powers and Duties—Practice—Procedure—Rules] Except as otherwise provided by this act, the court and the judge and clerk thereof shall have in matters within the jurisdiction of said court all the powers and duties of judges and clerks of the circuit court in like cases, and all laws now in force or hereafter enacted regarding the commencement of actions, process, the pleadings, the practice and the mode of trial, the enforcement of its judgments by execution or otherwise and the allowance and taxation of costs in the circuit court shall be deemed applicable to and be in force in the municipal court, except wherein the same may be inconsistent with the provisions of this act. The court may make and alter rules for the conduct of its business, for the practice therein and may prescribe in such rules forms of process and procedure conformably to law, which forms if so prescribed shall be substantially followed.

§ 28. Reporter—Appointment—Compensation—Duties] The judge of the court may appoint, whenever in his judgment it will expedite the public business and tend to a more economical and satisfactory administration of justice, a shorthand reporter and may dismiss him at pleasure. Except as in this act otherwise provided, all the provisions of article 7 of chapter eleven of the Political Code of this state shall apply to the appointment, duties and compensation of such reporter and to the testimony taken by him, provided, however, that his compensation shall be certified to by the judge, one-half of which shall be paid from the treasury of the city and the other half from the treasury of the county in which the court is located.

§ 29. Notices] Costs shall be taxed upon notice of not less than two days. Notices of trial shall be served at least four days and notices of trial and notes of issue shall be filed at least three days before the first day of the term. Notice for taking of depositions shall be the same as in the circuit court. Otherwise, the time within which pleadings may be served and other acts performed, except as otherwise in this act provided and except in case of sales under execution,

shall be half that prescribed in the circuit court, but no such half time shall be less than three days. Executions shall be returnable in thirty days from the date of their issue and may by the clerk be extended twice for periods of thirty days each. The period for the publication of summonses shall be four successive weeks.

§ 30. Cases Pending in Justices Courts] Upon qualification of the judge and the organization of the municipal court all actions and proceedings then pending and undetermined before the police justice of the peace or the city justice of the peace of the city, of which the municipal court, had it been established at the time such action or proceeding was commenced would have had exclusive original jurisdiction, shall be transferred to the municipal court and shall thereafter proceed and be determined therein as if they had been commenced therein. All files, papers, records and dockets in the offices of the police justice of the peace and city justice of the peace shall be turned over to the clerk of the municipal court and remain on file in said court, and thereafter executions on judgments which have been rendered by such police justice of the peace, or city justice of the peace, shall be issued by the clerk of the municipal court, unless a transcript of such judgment has been filed in the office of the clerk of the circuit court and the judgment docketed therein. Transcripts of judgments which have been rendered by a police justice of the peace or city justice of the peace may be issued by the clerk of the municipal court and filed in the office of the clerk of the circuit court and the judgment docketed in the circuit court.

§ 31. Fees of Witnesses] The fees of witnesses shall be the same in both civil and criminal actions as are allowed by law in the circuit court, but in criminal actions fees of witnesses shall not be required in advance. Policemen and other officials and employes of the city and officials and employes of the county shall not be paid witness fees in criminal actions.

§ 32. Lien of Judgments] No judgment of the municipal court shall be a lien upon real property until a transcript thereof is filed and the judgment docketed in the office of the clerk of the circuit court. If no execution upon such judgment be outstanding the judgment creditor may cause such transcript to be so filed and the judgment docketed in the office of the clerk of the circuit court and thereafter no execution shall issue on such judgment except from the circuit court. Transcripts of such judgment so filed and docketed may be issued by the clerk of the circuit court and filed and the judgment docketed in other counties with the same force and effect as in the case of a judgment originally rendered in the circuit court. When docketed in the circuit court as herein provided the judgment shall have the same force and effect in all respects as a judgment of the circuit court, and the enforcement thereof shall be under the control of the circuit court.

§ 33. Judge Pro Tempore] In case of the illness or inability of the judge to act, or if he shall desire to be absent from the city, he may appoint any attorney at law possessing the qualifications described in section 9 of this act as judge of the court pro tempore, which appointment shall be in writing and spread on the records of said court. Such judge pro tempore, having first taken the proper oath and said oath being properly filed, may during the absence of the judge or his illness or inability to act, perform all of the duties of the judge and of the court. His compensation, however, shall be paid by the judge. The judge shall be responsible on his bond for all the acts of such judge pro tempore, provided, however, that such appointment shall be valid for sixty days only.

§ 34. Change of Venue] Changes of venue may be asked and allowed in all cases in which the same may be asked and allowed in the circuit court, and when a change of venue is asked and allowed, or when the judge for any reason is disqualified from sitting in the trial of an action, either civil or criminal, he shall appoint a judge pro tempore for the trial of such action in the manner provided in section 33 of this act, before whom the action shall be tried.

§ 35. Additional Powers and Duties of Judge] The judge shall have the power to administer oaths, take acknowledgments, take depositions (except such as are to be used in his own court), and solemnize marriages, the fees for which he may collect and retain in addition to his salary. The judge of the court in cities having a population of ten thousand and over shall not practice in other courts of this state. The judge of the court in cities having a population of less than ten thousand may practice in other courts of this state. If the judge has a partner, his partner shall not practice before him or before a judge pro tempore. In all actions wherein a judgment upon a contract is rendered otherwise than pursuant to a verdict of a jury, the judge shall, before entering the judgment, determine the amount due upon the contract.

§ 36. Additional Powers and Duties of Clerk] The clerk of the court shall have the power to administer oaths. Of all fines other than for the violation of city ordinances or offenses under the city charter or the laws under which the city is organized the clerk shall render the same report and account to the county commissioners of the county, and pay the same to the county treasurer, and shall also make the same reports to such commissioners provided for in chapter 3 of the Justice Code.

§ 37. Repeal] All acts and parts of acts in conflict with or inconsistent with this act are hereby repealed.

Approved March 11, 1907.

NORTHERN HOSPITAL

CHAPTER 192

(H. B. 132)

RELATING TO THE NORTHERN HOSPITAL FOR INSANE

AN ACT to Amend Sections Five (5) and Seven (7) of Chapter One Hundred and Thirty-nine (139) of the Session Laws of 1905, Relating to the Class of Persons Who May be Committed to the Northern Hospital for Insane.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That section 5 of chapter 139 of the Session Laws of 1905 be, and the same is hereby amended to read as follows:

All persons coming within the classes designated in section three (3) of this act, as proper subjects for custody, care or training in said institution, and who have been residents of this state for one year next preceding their admission to said institution, shall be entitled to be received at said institution and maintained and educated and cared for at the expense of the state, if, in the judgment of the superintendent, the applicant is a suitable person to receive its benefits, and if the capacity of such institution and its facilities will permit, provided, that the expenses for clothing and incidentals of inmates of such institution shall be paid as provided in this act. Provided, further, that persons now inmates of said institution, whose parents, guardians or relatives are now residents of this state, may be retained in said institution but for all such a fair compensation shall be paid, to be fixed by the board of charities and corrections.

§ 2. Amendment] That section seven (7) of chapter one hundred and thirty-nine (139) of the Session Laws of 1905 be, and the same are hereby amended to read as follows:

When any person belonging to any of the classes named in section three of this act, is found in any county in this state, and who is without a legal guardian in said county, such person may be committed to the custody of the superintendent of the Northern Hospital by the county judge of said county, on the complaint of the state's attorney of such county, and in which case the county shall pay the expenses of such commitment and transportation to said institution. When a person is committed, as in this section provided, the superintendent of the Northern Hospital shall have the legal custody of such person with all the rights of a guardian of the person as provided by law.

§ 3. Repeal] All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Approved March 9, 1907.

NOTICE

CHAPTER 193

(S. B. 2)

PROVIDING THAT CERTAIN INSTRUMENTS SHALL BE DEEMED TO IMPART NOTICE, NOTWITHSTANDING CERTAIN DEFECTS

AN ACT Providing that Certain Instruments Shall be Deemed to Impart Notice, Notwithstanding the Absence of Any Acknowledgment or Any Defect, Omission or Informality in the Execution or Acknowledgment Thereof, and Providing for the Reading of Evidence of Such Instruments or the Records or Certified Copies Thereof.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Any instrument affecting real property, which was, previous to the first day of January, 1907, copied into the proper book of record, kept in the office of any register of deeds, shall be deemed to impart, after that date notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or incumbrancers previous to that date. Such instruments, the records of the same, or certified copies thereof, may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

Approved March 2, 1907.

NURSERY

CHAPTER 194

(H. B. 177)

RELATING TO NURSERIES AND NURSERY AGENTS

AN ACT Entitled an Act Relating to the Inspection and Registration of Fruit Tree Nurseries and Regulation of Nursery Agents.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Must Secure Permit] Any person, firm or corporation which owns or operates a nursery in South Dakota or any other state or territory and which desires to sell from the same, either directly or indirectly, by traveling or local agents, salesmen or representatives, any trees, vines, bushes or other nursery stock, within the limits of the state of South Dakota, shall first secure a permit from the board of agriculture, authorizing such nursery, or its duly constituted representatives, to do business in the state. As conditions precedent to the issuance of such permit, the board of agriculture shall require a certificate of inspection from a competent entomologist, duly authorized to act as an inspector in the state or territory where such nursery is owned and operated, and the board of agriculture shall furthermore, require such references and evidences of integrity as may seem to be necessary to establish the responsibility and good faith of the applicant. The said state board of agriculture shall require of all persons, firms or corporations operating under the provisions of this act, to give a continuing bond in the sum of \$5,000.00, running to the state of South Dakota, on which any person who sustains damage by reason of the violation of the provisions of this act may recover.

§ 2. Certificate of Authority] Any person, who, acting as agent or solicitor, within the limits of the state of South Dakota, sells, or offers to sell, trees or any other nursery stock for any person, firm or corporation which may be engaged in the nursery business, shall be required to carry a letter or certificate from his principal, setting forth the fact that he is duly authorized to represent such nursery and that the guarantee is made that any written contract entered into by him, as agent, will be fulfilled if the same is accepted by said nursery and unless notification to the contrary be made in writing to the purchaser within thirty days after such order or contract is made. In addition to the foregoing, each agent or solicitor who

ells or offers to sell trees or other nursery stock, that may have been grown in any other state or territory, shall be required to procure and carry a duplicate of the permit issued to his principal.

§ 3. Misrepresentation] It shall be unlawful to misrepresent nursery stock which is offered for sale, or refuse to state where the same was propagated or the manner of propagation, or to sell, offer for sale or deliver nursery stock which is untrue to name or which, because of lack of hardiness, or from the use of tender roots or stocks in propagation are worthless for the locality where they are to be planted or to sell seeds which have been adulterated or seeds by reason of age have become deficient in vitality and germinating power, or containing seeds of any noxious or injurious plants to any greater extent than is alleged or claimed in the seed test of the goods sold.

§ 4. Violation—Penalty] The violation of the provisions of any of the foregoing sections of this act shall be deemed a misdemeanor, punishable by a fine of not less than fifty dollars nor more than three hundred dollars and in addition, any person, firm or corporation engaged in the nursery business or any nursery agent or solicitor who violates the provisions of the foregoing sections of this act shall forfeit the permit which gives the right to do business in the state of South Dakota which may be held by such party or parties and such agent or solicitor shall be disqualified to receive a permit to act as agent for any other nursery which operates in the state of South Dakota.

§ 5. Fee] The board of agriculture shall collect as a fee for issuing a permit to nurseries to do business in the state of South Dakota as provided in section one (1) of this act the sum of ten dollars annually and, as a fee for each agent's duplicate of such permit, the further sum of two and one-half dollars annually. All moneys so received shall be paid over to the state treasurer to be placed in a separate fund which shall be known as the nursery regulation fund to be used at the discretion of said board of agriculture, and said board shall render an annual report to the governor, giving a detailed statement of all receipts and expenditures under the provisions of this section.

§ 6. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 2, 1907.

OSTEOPATHY

CHAPTER 195

(S. B. 222)

CREATING BOARD OF OSTEOPATHIC EXAMINERS

AN ACT Creating a State Board of Osteopathic Examiners and Registration to Regulate the Practice of Osteopathy in the State of South Dakota, and to License Osteopathic Physicians and to Prescribe Penalties for the Violation of this Act.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Governor to Appoint Examiners] Within thirty days after the passage of this act the governor shall appoint three osteopathic physicians who have been resident practitioners for at least two years, to be known as the state board of osteopathic examiners. The members of said board shall serve for a term of three years except the first appointees, who shall serve for one, two and three years in the order of their appointment; all expirations, vacancies or resignations shall be filled by the governor.

Within thirty days after the appointment of the members of the above board they shall meet and organize by electing a president, secretary and treasurer and adopt rules and regulations governing time and place of holding examinations, per diem, mileage and other expenses, which must be paid from applicant fees.

Any person holding a diploma from a legally incorporated and regularly conducted school of osteopathy of good repute, recognized as such by the National Osteopathic Association, wherein the course of instruction was not less than twenty months, and after the year 1907 will not be less than three years of nine months each, including the following subjects, to wit: Anatomy (with a full course in dissecting), histology, physiology, chemistry, toxicology, urinalysis, osteopathic pathology and symptomology, bacteriology, osteopathic obstetrics and gynecology, psychology, mental and nervous diseases, skin and venereal diseases, general surgery, medical jurisprudence, hygiene and dietetics, public health and sanitation and the theory and practice of osteopathy, with one year of clinical practice, shall, on the presentation of such diploma to the state board of osteopathic examiners, and upon passing the examination in the following subjects, to wit: Anatomy, histology, physiology, physiological chemistry, toxicology, osteopathic diagnosis, osteopathic pathology, osteopathic obstetrics and gynecology, minor surgery principles and practice of os-

opathy and such other subjects as the board may require, and paying a fee of twenty dollars to the secretary of the examining board, one-half of which shall be returned to applicant in case of failure to pass, or the applicant may, within one year, upon request, have another examination in lieu of accepting one-half as mentioned in this section, receive a certificate to practice osteopathy in the state of South Dakota, which certificate shall be recorded in the office of the register of deeds in the county in which the applicant proposes to practice. Before beginning to practice an application must be made to the secretary of the state board of osteopathic examiners, accompanied by the examination fee of twenty dollars, for which he will receive a permit to practice until the next regular examination. Provided further, that osteopathic physicians practicing under prior acts are not required to pass an examination under this act, and provided further, that all persons practicing osteopathy in this state under certificates issued from osteopathic schools not recognized by the National Osteopathic Association shall be required to pass an examination before the state board of osteopathic examiners under the provisions of this act, and upon passing such examination shall receive from said board a certificate to practice osteopathy in the state of South Dakota.

§ 2. Practice Limited] The certificate provided for in the foregoing section shall not authorize the holder thereof to perform major operations; his or her practice shall be limited to the methods of practice as taught in the standard colleges of osteopathy. Osteopathic physicians shall be subject to the same rules, both public and state, that govern physicians of other schools as to births and deaths, and the control of contagious diseases, and shall be entitled to all the privileges granted other physicians pertaining to the public health.

§ 3. Certificate May be Revoked] Any certificate may be revoked by the state board of osteopathic examiners upon proof of any unprofessional conduct on the part of any practitioner, duly licensed to practice osteopathy in this state.

§ 4. Osteopathy Defined] Osteopathy is hereby declared not to be the practice of medicine within the meaning of chapter 176 of the Session Laws of the eighth legislative session of the legislature of the state of South Dakota for the year 1903.

§ 5. Any person who shall begin the practice of osteopathy within the state before obtaining a permit or certificate to practice, or who shall continue to practice after the expiration of such permit, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than five hundred dollars.

§ 6. Violation—Penalties] Any person practicing osteopathy in this state who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof be fined not less than fifty dollars nor more than one hundred dollars,

and for a second offense, in addition to fine, his or her certificate may be revoked.

§ 7. Violation—Penalty] Any person who shall advertise or attempt to practice osteopathy, or who shall use any of the terms or letters, osteopath, osteopathist or osteopathy, D. O., or any other title or titles under such circumstances as to induce the belief that the person who uses such terms is engaged in the practice of osteopathy without having complied with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars.

§ 8. Penalty] Any person convicted under any of the provisions of this act, in addition to the penalties heretofore provided in this act, may be imprisoned in the county jail not less than thirty days nor more than six months in the discretion of the court. It shall be the duty of the state's attorney in the county in which such person resides or practices when notified of such violation to take charge and conduct the prosecution under this act.

§ 9. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 10. Emergency] Whereas an emergency exists this act shall take effect from and after its passage and approval.

Approved March 2, 1907.

PAINT

CHAPTER 196

(H. B. 35)

PREVENTING DECEPTION IN THE SALE OF PAINT

AN ACT Entitled an Act to Prevent Deception in the Sale of Paint.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Violation—Penalty] Every person, firm or corporation who manufactures for sale, or sells within this state any paint which is not accurately labeled as hereinafter required shall be guilty of a misdemeanor and for each offense shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars and not more

than one hundred dollars and costs, or by imprisonment in the county jail, not exceeding sixty days.

§ 2. Term Defined] The term "paint" as used in this act, shall include white lead in linseed oil or any compound intended for the same use, paste or semi-paste, and liquid or mixed paint ready for use.

§ 3. Label] The label required by this shall be pasted or fastened on the outside of each container of paint, and shall have printed thereon clearly and distinctly, the name and residence of the manufacturer of the paint, or of the distributor thereof, or of the party for whom the same is manufactured, and the quantity of the paint contained in the container; and the names and the percentages of each ingredient, both solid and liquid contained therein, together with the necessary coloring matter to produce the desired tint, in which case it shall be sufficient to state the description or trade name of such coloring material, and with substantial accuracy, its chemical analysis.

§ 4. The having in possession of any person, firm or corporation, dealing in said articles, any article or substance hereinbefore described and not properly labeled, as provided by section 1 of this act, shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this act, and punishable under it.

§ 5. By Whom Enforced] The food and dairy commissioner is charged with the proper enforcement of all of the provisions of this act.

§ 6. Power of Commissioner and Assistants] The said commissioner and the assistants, chemists and agents shall be duly authorized for the purpose, and shall have access and ingress to all places of business, factories, stores and buildings used for the manufacture or sale of paints. They shall also have power and authority to open any package, can, jar, tube, or other receptacle containing white lead or other paints that may be sold, manufactured or exposed for sale in violation of the provisions of this act.

§ 7. In Effect—When] This act shall take effect and be in force from and after July 1, 1907.

Approved March 6, 1907.

PARENTS

CHAPTER 197

(H. B. 1)

PROVIDING PENALTY FOR FAILURE TO SUPPORT

AN ACT to Amend Section 341 of the Revised Penal Code of 1903 of South Dakota, Relating to the Failure of the Husband to Support the Wife, and the Failure of Parents to Support Their Children, and Prescribing the Penalty Therefor.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 341 of the Revised Penal Code of 1903 of South Dakota be amended to read as follows:

Section 341. Every parent of any child and the husband of any woman who willfully omits, without lawful excuse, to perform any duty imposed upon him or them by law, to furnish necessary food, clothing, shelter, or medical attendance for such child or wife, shall, on conviction thereof, be deemed guilty of a misdemeanor.

§ 2. All acts or parts of acts in conflict with this act are hereby repealed.

Approved February 12, 1907.

PAROLE

CHAPTER 198

(H. B. 232)

RELATING TO PAROLE OF CONVICTS

AN ACT to Amend Sections 1 and 2 of Chapter 144 of the Session Laws of 1905, Entitled an Act to Provide for the Conditional Release and Parole of Convicts Confined in the Penitentiary, Regulating Their Conduct During Such Period of Parole, Providing for the Return of Convicts Violating the Conditions of Such Parole, Providing the Duties of Public Officers in Connection Therewith and Penalty for the Failure of a Public Officer to Comply With the Terms of This Act.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1 of chapter 144 of the Session Laws of 1905,

entitled an act to provide for the conditional release and parole of convicts confined in the penitentiary, regulating their conduct during such period of parole, providing for the return of convicts violating the conditions of such parole, providing the duties of public officers in connection therewith and penalty for the failure of a public officer to comply with the terms of this act, be and the same is hereby amended to read as follows:

Section 1. Official Statment of Judge and State's Attorney] Whenever any person shall be convicted of a felony it shall be the duty of the judge before whom such person is convicted and also of the states attorney of the county in which he or she is convicted to furnish the warden of the penitentiary with an official statement of the facts and circumstances constituting the crime whereof the convict has been convicted, with all the information accessible to them in regard to the career of the convict prior to the time of the committal of the crime of which he or she is convicted, relating to the habits, associates, disposition and reputation of said convict and any other facts or circumstances which may tend to throw any light upon the question as to whether he or she is capable of again becoming a law abiding citizen. It shall be the duty of the court stenographer at the direction of the judge of the said court to write the official statements of the judge and states attorney above referred to at the time of the conviction of the convict and it shall be the duty of the clerk of said court to cause such official statements to be attached to the order of commitment to be delivered by the sheriff of the county to the warden of the penitentiary at the time of the delivery of the convict and it shall be the duty of the warden upon receipt of such convict to safely keep and record such official statements and have the same at all times ready for the inspection of the board of charities and the governor. The provisions of this act shall apply to all persons who shall have been convicted of a felony and shall have been received into the penitentiary prior to the passage, enactment and approval of this law and who are now confined therein.

It shall be the duty of the warden of the penitentiary in the case of any person who has been convicted of a felony and who has been received into the penitentiary, prior to the passage, enactment and approval of this law, and who is now confined in the penitentiary, to apply to the judge before whom such person was convicted and also to the states attorney of the county in which he or she was convicted at the time of said conviction, to furnish an official statement of the facts and circumstances constituting the crime whereof the convict was convicted, together with all the information accessible to them in regard to the career of the convict prior to the time of the committal of the crime of which he or she was convicted, relating to the habits, associates, disposition and reputation of such convict and any other facts or circumstances which may tend to throw any

light upon the question as to whether he or she is capable of again becoming a law abiding citizen, and it shall be the duty of the judge before whom such person was convicted and also of the states attorney of the county in which he or she was convicted at the time of the conviction to furnish such official statement upon the application of said warden. In case of the death or removal from the state of said judge or said states attorney or either of them, or if for any reason such statements cannot be procured from said judge or said states attorney or either of them, then it shall be the duty of the warden to make inquiry as to the above facts from any reputable citizen of said county cognizant of said facts. And it shall be the duty of the warden to safely keep and record such statements and have the same at all times ready for the inspection of the board of charities and the governor.

§ 2. That section 2 of chapter 144 of the Session Laws of 1905 entitled an act to provide for the conditional release and parole of convicts confined in the penitentiary, regulating their conduct during such period of parole, providing for the return of such convicts violating the conditions of such parole, providing the duties of public officers in connection therewith and penalty for the failure of a public officer to comply with the terms of this act, be and the same is hereby amended to read as follows:

Section 2. Regulation of Convicts—Duty of Warden] When any convict shall be received in the penitentiary and in the case of all convicts who have, prior to the passage, enactment and approval of this law, been received into said penitentiary, the warden shall cause to be entered in the register kept for the purpose the date of such admission, the name, nativity, nationality and all other facts that can be ascertained in addition to said official or other statement regarding the parentage, education, occupation and early social influences as may tend to indicate the constitutional and acquired defects and tendencies of the convict, and shall also cause a careful examination, measurement and record to be made of the convict according to the Bertillion system. The physician of said penitentiary shall carefully examine each convict when received and shall also carefully examine each convict received prior to the passage, enactment and approval of this law, and shall enter in the register to be kept by him the name, race, nationality, weight, stature and family history of such convict and also a statement of the condition of the heart, lungs and other leading organs, the rate of pulse and respiration, the measurement of his chest and abdomen and any existing disease, deformity, marks or disability acquired or inherited, with all the facts regarding his health and physical condition.

There shall be entered from time to time upon the register of the warden the minutes of any fact affecting the standing and condition of each convict and any subsequent facts of his personal history

which may be brought to the knowledge of the warden bearing upon the question of parole or final release, and it shall be the duty of the warden or deputy warden to furnish the governor with a copy of the records kept by the warden and by the physician of the penitentiary when requested and all other facts that may have come to the knowledge of the warden concerning any convict whose parole or final release the governor may be considering, and also to give his opinion in writing when requested by the governor regarding the fitness of any convict for parole or final release.

§ 3. Emergency] Whereas, there is now no adequate law regulating the parole of any convicts who were convicted of a felony and who were received into the penitentiary and are now confined therein prior to the passage, enactment and approval of chapter 144 of the Session Laws of 1905, therefore an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 4, 1907.

CHAPTER 199

(S. B. 24)

PROVIDING FOR PAROLE OF INMATES OF THE REFORM SCHOOL

AN ACT to Provide for the Parole of Inmates of the Reform School and Prescribing Procedure and Penalties Thereto.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Board May Parole] That the state board of charities and corrections is hereby authorized and empowered to parole an inmate of the reform school in accordance with the conditions herein stated and under such rules and regulations as the said board may adopt that are not in conflict with the provisions herein stated.

§ 2. Board Must Make Inquiry] That the said board of charities and corrections shall, before granting a parole to an inmate, make careful and diligent inquiry in regard to the age, past history, education, conduct while an inmate and fitness for employment of the inmate. In all cases of application and recommendation for the parole of an inmate the said board shall require of the superintendent of the reform school a detailed statement in regard to the subjects of inquiry above stated.

Before granting a parole, the said board must be satisfied that suitable employment has been obtained for the inmate, or if the inmate be of tender years that a suitable home has been secured for him.

§ 3. The state board of charities and corrections may, in accordance with the conditions above stated, grant a parole to an inmate of the reform school for such period of time as they may deem advisable, not extending, however, beyond the term for which such inmate was committed to the reform school. Provided, however, that such paroled inmate shall, during the term of his parole, be and remain subject to the general control of the superintendent of the reform school under such rules and regulations as may be established by the state board of charities and corrections.

§ 4. Record Must be Kept] The superintendent of the reform school, or such officer or employe of said school as may be designated by the state board of charities and corrections, shall keep a permanent record of all paroled inmates, stating date and term of parole, employment and place of employment, date of correspondence with the paroled inmate and the date and substance of the reports of the employer. It shall be the duty of the superintendent of the reform school, or of such officer or employe of said institution as may be designated by the said board, to keep in correspondence with each paroled inmate and to require and receive at stated intervals reports from the employer of such paroled inmate, stating in detail in regard to the conduct, habits and progress of such paroled inmate.

It shall be the duty of the superintendent of the reform school, or of the officer or employe designated by the said board, to visit such paroled inmate whenever it may seem necessary to ascertain his condition and progress.

§ 5. Paroled Inmate Returned—When] Should any paroled inmate by misconduct, bad behavior, negligence or disregard of duty, prove unworthy of parole under the rules of said board, it shall be the duty of said superintendent or of said designated officer or employe to return or cause to be returned such paroled inmate to the reform school.

§ 6. May Enter Dwelling] The said superintendent or designated officer or employe of the reform school is hereby authorized to enter any dwelling house or other building whenever he has reasonable cause to believe that any paroled inmate of the reform school is detained, concealed or kept in hiding, and recover the possession of the person of such paroled inmate. Any person who shall resist, obstruct or willfully interfere with said superintendent or said designated officer or employe of the reform school in his attempts to recover possession of such paroled inmate, is hereby declared guilty of a misdemeanor, and any parent, guardian or other person who shall abduct, conceal, entice or carry away or improperly interfere with a paroled inmate of the reform school shall be guilty of a misdemeanor.

§ 7. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 8. Emergency] An emergency is hereby declared to exist, and this act shall be in force and effect from the date of its passage and approval.

Approved February 15, 1907.

PEACE OFFICERS

CHAPTER 200

(S. B. 62)

RELATING TO PEACE OFFICERS

AN ACT Entitled an Act to Confer Upon Justices of the Peace, Police Justices and Municipal Judges Power to Subpoena and Examine Witnesses Before the Issuance of a Warrant of Arrest.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Power to Subpoena and Examine Witnesses] Whenever any complaint verified upon information and belief is laid before any justice of the peace, police justice or municipal judge, that a criminal offence has been committed against any law of this state and asking for an investigation of the same, such justice of the peace, police justice or municipal judge shall issue his subpoena requiring any and all persons to attend before him at the time and place mentioned in such subpoena and submit to an examination and give testimony concerning any violation of law about which he may be questioned. Such testimony shall be reduced to writing by the justice and shall be signed and sworn to by the witness, and if the offense complained of appears to have been committed a warrant for the arrest of the offender shall be issued and further proceedings shall then be had as now provided by law. No witness shall refuse to comply with such subpoena because his fee therefor has not been paid in advance and his attendance may be compelled by attachment in the same manner and with like effect as now provided by law.

Approved February 27, 1907.

PEDDLERS

CHAPTER 201

(H. B. 192)

RELATING TO PEDDLERS' LICENSE

AN ACT Entitled an Act to Amend Section 5, Chapter 190, Session Laws of the State of South Dakota, 1903, Relating to Peddlers' License.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Fee for License] That section 5, chapter 190, Session Laws of the state of South Dakota, 1903, be amended to read as follows:

Section 5. Every such applicant before he shall be entitled to such license shall pay the county auditor the following license fees: If he intends to travel by bicycle or on foot, including railroads or other public conveyances, but carry with him his goods, wares, or merchandise, thirty dollars; if he intends to travel and carry his goods with a single horse or other beast carrying or drawing a burden, sixty dollars; if he intends to travel with an automobile, a vehicle or carriage drawn with two or more horses or other animals, one hundred dollars; if he intends to travel as a transient merchant, trader or dealer, two hundred dollars, provided, that any such applicant taking license as such transient merchant, trader or dealer shall in addition to the amount paid for such license, also pay to the authorities of the said town, city or village where he may sell or offer for sale any goods, wares or merchandise, a sum not exceeding twenty-five dollars per day for each day that such person may be engaged in the selling of any such goods, wares or merchandise, to be determined by ordinance or resolution of the town, city or village where he may engage in business aforesaid, which ordinance or resolution shall provide when and in what manner, such per diem shall be paid. (Provided, further, that each license issued under the provisions of this act shall be numbered, and that such number shall be displayed in figures on the vehicle in which the peddlers travel.)

Note by the Secretary of State: The foregoing act, having been presented to the governor of this state for his approval, and not having been returned by him to the house of the legislature in which it originated, or to the secretary of state with his objections, within the time prescribed by the constitution has become a law without his approval.

D. D. WIPF,
Secretary of State.

PHYSICIANS AND SURGEONS

CHAPTER 202

(H. B. 179)

RELATING TO THE LICENSING OF PHYSICIANS AND SURGEONS AND
REGULATING THE PRACTICE OF MEDICINE

AN ACT Entitled an Act to Amend Section 10 of Chapter 176 of the Session
Laws of 1903, Relating to the Licensing of Physicians and Surgeons and
Regulating the Practice of Medicine.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Section 10 of chapter 176 of the Session Laws of 1903 is hereby amended to read as follows:

Section 10. License Without Examination—When] The said board may at its discretion, upon the presentation of a certificate of registration or license issued to the applicant by the examining board of any state or territory of the United States or of the District of Columbia, and upon the payment of the license fee herein provided, license such applicant without examination, in either of the following cases, to-wit: (1) Where the legal requirements of the examining board of such state, territory or District of Columbia shall have been at the time of issuing such certificate of registration or license therein, in no degree or particular less than those of this state; or, (2) where the applicant at the time the certificate of registration or license was issued to him in such state, territory or District of Columbia was the legal possessor of a diploma issued to him at a time prior to the time when an examination test was required by the laws of such state, territory or District of Columbia by a medical college in good standing therein, and which is recognized by the board hereby created as a reputable medical college; and has been in active practice up to the time of presenting such application; provided, that the provisions of this section shall be held to apply only to the certificates of registration or licenses issued by such of said medical examining boards as accept and register or license, without examination, persons who are authorized by law to practice medicine, surgery or obstetrics in this state. Each applicant upon making application under the provisions of this section shall pay to the secretary of the board a license fee of twenty dollars.

Approved March 7, 1907.

PRISON

CHAPTER 203

(S. B. 237)

RELATING TO THE DEFINITION OF THE TERM PRISON

AN ACT to Amend Section 152 of the Revised Penal Code of 1903 Relating to the Definition of the Term Prison.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 152 of the Revised Penal Code of 1903, be and the same is amended to read as follows:

Section 152. Definition of Term] The term prison in this chapter includes state penitentiaries, prisons, county jails, and every place designated by law or by the resolution or ordinance of any municipal corporation for the keeping of persons held in custody under process of law or under any lawful arrest.

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 6, 1907.

CHAPTER 204

(S. B. 203)

PROVIDING COMPENSATION FOR KEEPING PRISONERS IN CERTAIN CASES

AN ACT to Provide Compensation for Counties for Keeping Prisoners Confined in Jail by Authority of the United States, of Other States or Territories or of Counties Other than the County Which is Keeping Such Prisoners.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Officers] Whenever any person or persons shall be confined in any county jail, by authority of the United States, or of any state or territory other than this state, or any county other than the county in which such jail is located, it shall be the duty of the sheriff, jailer or other person in charge of such jail, to charge and collect, in addition to the charges now allowed by law, such further

sum or sums as shall be necessary to fully compensate and reimburse said county for money actually and necessarily expended for fuel, light, and other expenses which said county shall be put to in the keeping of such person or persons.

§ 2. Amount—How Fixed] The amount of such expense, shall be fixed by the board of county commissioners and collected by the sheriff or other person in charge of such jail, in the manner and at the time when the other charges now provided by law are by him collected, and when so collected the same shall be by him promptly turned over to the county treasurer of such county.

§ 3. Emergency] Whereas, there is no law providing for such compensation, therefore an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 3, 1907.

PUBLIC PRINTING

CHAPTER 205

(S. B. 278)

RELATING TO PUBLIC PRINTING

AN ACT Creating a State Printing Commission, Defining Their Powers and Duties, Fixing the Compensation, and Regulating the Manner in Which Printing and Binding for the State of South Dakota Shall be Done.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. State Printing Commission] The governor, secretary of state and state treasurer shall constitute the state printing commission of South Dakota, and shall have general supervision of all printing and binding for the state of the classes and kinds hereinafter provided for.

§ 2. Classes of Printing] The printing and binding of the state of South Dakota which shall be done under the direction of the state printing commission, shall be divided into five classes designated as follows:

1. First Class. Printing and binding of all bills and joint resolutions introduced in the house and senate in such number as the house and senate may designate by the rules governing their procedure or by special resolution of either house.

2. Second Class. The printing and binding of the daily and permanent journals of the legislature and the printing and binding of the legislative manual shall constitute the second class.

3. Third Class. The printing and binding of annual and biennial reports of state officers and boards of control of public institutions which are required by law to make such reports and the binding of public documents shall constitute the printing and binding of the third class.

4. Fourth Class. The printing and binding of the general laws and joint resolutions passed by the legislature shall constitute the 4th class.

5. Fifth Class. The printing and binding and the furnishing of supplies which the state printing commission shall deem necessary for use of the next legislative session, shall constitute the printing and binding of the fifth class.

§ 3. Commission Must Advertise for Bids] The state printing commission shall annually advertise in at least four newspapers of the state, between the first and twenty-fifth days of May, for three issues of said papers, that they will receive sealed bids on a day and hour, to be stated in such notices for the execution of the state printing and binding, for the term of one year from the first day of July following, said bids to be opened in public, on the day and hour designated in the notice for bids which time shall be on or before the thirtieth day of June of that year.

Provided that the state printing commission shall mail to all parties requesting the same, specifications for the several classes of printing and binding, immediately on application therefor.

§ 4. Compensation] The compensation for doing the printing and binding for the state, shall not exceed the following rates, for composition fifty cents per 1000 ems. For press work, twenty-five cents per 100 impressions of eight pages each, also for book work of the second, third and fourth classes and also for four pages each of bill work of the first class; and not to exceed twenty cents per 100 impressions of each form of blank, or other printing of the fifth class.

For binding in the first class, folding one fold, eight cents per 100 sheets; two fold 12 cents per 100 sheets; three fold fifteen cents per 100 sheets; for stitching, thirty-five cents per 100 copies where six or more pages are contained in any one bill or joint resolution;

For punching each 100 bills, for inserting in legislative files, fifteen cents per 100 copies. No allowance shall be made for stitching or pasting any bill containing only four pages.

For binding in the second class, two cents each for copies of the daily journal; for binding the permanent journals of the house and senate, with cloth cases, and title printed on backs twenty-five cents per volume of 100 pages or less and each additional 100 pages or less five cents per volume; for binding legislative manual in blue cloth

cases with gilt title on back and sides, thirty-five cents per volume.

For binding of the third class, in pamphlet form, ten cents per volume of 100 pages or less and each additional 100 pages or less, three cents per volume; for binding in cloth cases with gilt titles, thirty-five cents per volume. For binding of the fourth class in pamphlet form, books to be sewed or stitched, first 100 pages, ten cents per volume, each additional 100 pages or less three cents per volume; in canvass cases with printed title, thirty-five cents per volume; in marble paper sides with leather backs and corners, or in full sheep, first 100 pages forty cents per volume, each additional 100 pages, ten cents per volume; for gilt titles, five cents each.

For paper stock the following prices shall be the maximum; for print paper six cents per pound; for machine finish or sized and calandered paper, ten cents per pound; for sized and super calandered paper twelve cents per pound; for enameled book paper, eighteen cents per pound.

§ 5. Blanks Furnished by Secretary of State—Bidders Must Deposit Certified Check—Contract] All bids for printing and binding for this state shall be made on blanks to be furnished by the secretary of state, said blanks to be prepared under the direction of the state printing commission. Bids for each class shall be enclosed in a separate envelope, addressed to the secretary of state stating for which class the proposal is made, and shall be accompanied by a receipt from the state treasurer showing that the bidder or bidders have deposited with the said state treasurer a certified check payable to the treasurer of the state of South Dakota as a guarantee that the bidder will enter into and complete a bond within ten days after the awarding of the contract to him for which deposit is made. The amount of such certified checks shall be for bidders for the first class \$500.00, bidders for the second class \$1,000.00; bidders for the third class, bidding on all state reports \$1,500.00; bidders for the third class, bidding on single reports \$200.00; bidders for the fourth class \$750.00 and bidders for the fifth class \$100.00. All such deposits of such certified checks shall be made and receipts therefor given, at least one day prior to the opening of bids by the state printing commission. The state printing commission shall receive bids from any printing plant or publishing house in the state established four months prior to the time when said bids are opened and the state printing commission shall award the contracts for the various classes to the bidders bidding the greatest per cent off the maximum rate price allowed by law; they shall award separate contracts for each class of printing and binding, described herein, but such contracts shall not be awarded to contractors outside of the state of South Dakota, or to any local branch of any outside establishment; nor shall any contract for printing or supplies be awarded to, or work be done in any printing plant or publishing house in which any state official, his deputy or clerks shall have any interest

either directly or indirectly. Said state printing commission may reject any and all bids and re-advertise for proposals, but it is made their duty to accept the lowest responsible bid consistent with good work and subject to such rules and regulations as they may prescribe in the specifications for the several classes of printing and binding.

Provided that in letting bids they shall take into consideration the capacity of the bidder to execute the work without delay to the state or the officers having printing done under such contracts. Upon the opening of bids the state printing commission shall make their award to the successful bidder and shall require him or them to execute a bond for each class awarded such contractor in twice the amount for which it is estimated the contract will cost the state; and in case any contractor refuse or neglects to file such bond within ten days after being notified by the secretary of state of the award of any such contract to him by the state printing commission, the state printing commission shall notify the state treasurer in writing to cover into the general fund of the state the amount of the certified check in his hands, as security for the completion of such contract, and the state printing commission shall immediately advertise for bids in the same manner as before provided, making the date of opening such bids no later than the twentieth of July following; any bidder not successful in securing an award of a contract for which he has deposited certified check, shall be entitled to receive in return from the state treasurer his check or checks so deposited upon written order from the state printing commission.

§ 6. Bonds] All bonds given for the faithful performance of any contract awarded by the state printing commission shall have two or more sureties besides the principal signing the same, or an indemnity bond to be approved by the printing commission.

§ 7. Daily Journals] The senate and house of representatives shall at each session of the legislature provide by resolution the number of daily journals containing the proceedings of said bodies to be printed, and the manner in which they shall be distributed.

§ 8. Permanent Journals—Number of] There shall be printed 500 copies each of the senate and house permanent journals and they shall be bound in cloth cases with title printed on back and shall contain a proper and correct index of the same, together with a list of the members of the legislature and the employees of the session.

§ 9. Journals—How Distributed] The secretary shall distribute the bound journals of the legislature as follows: One copy of each journal without cost to the following persons and institutions: All state officers, judges of the supreme and circuit courts, all members of the legislature, all officers, clerks and employees of the legislature, secretary of the state historical society, librarian of congress, and the librarian of each state library of the United States, the librarian of each state institution in this state, 50 copies of each journal

shall be placed in the state library for the use of the legislature while in session, and the surplus if any may be sold by the secretary of state at a cost equal to ten per cent added to the price of printing and binding said journal, and the proceeds of such sale shall be turned over to the state treasurer, and by him credited to the state general fund.

§ 10. Governor's Message and Inaugural Address—Number of] There shall be printed six hundred copies of the governor's message and inaugural address, five hundred copies of each of which shall be bound in pamphlet binding and delivered to the governor making the same for distribution as he may desire. One hundred copies of each shall be delivered to the secretary of state unbound to be bound in the copies of the public documents hereinafter provided for; in addition thereto each house of the legislature, may by a vote of two-thirds of the members of such house, order such additional copies of the governor's inaugural address as they may desire for their own distribution to be bound as they may designate; provided that in no case shall the state pay for composition more than twice for such inaugural addresses and governor's messages; and the printing thereof shall be done by the contractor having the contract for printing and binding of the second class.

§ 11. Reports to be Printed—Number of] There shall be printed of each state officer's report and of each board and commission making report to the governor such number of copies of each report as the state printing commission may decide; provided that there shall not be less than five hundred nor more than 2,000 copies of any such report unless otherwise expressly provided by the legislature. The state printing commission shall designate how many copies of each of said reports shall be bound in cloth cases; and how many copies of each shall be bound in pamphlet form; but in all cases they shall reserve 100 copies unbound to be delivered to the secretary of state for binding in the public documents. The state printing commission shall not allow to exceed \$3.00 for folding and gathering the 100 copies unbound of any state report.

§ 12. Reports to be Made in Duplicate] All reports made by officials or boards to the governor shall be made in duplicate form and complete for publication, unless such officer or board making said report, shall have had his or their report for that year printed, in which case a printed copy thereof marked "Official Copy" and filed with the governor shall be sufficient, and the governor need not furnish any further copy to the state printer.

Provided that contractors for the third class shall be furnished with legible typewritten copy of each report to be printed by them, and said copy shall be complete for publication and in case of change of copy after composition is made, the contractor shall be allowed fifty cents an hour for the time actually and necessarily required to make such change.

§ 13. Copies—When Filed] All state officials and boards now or hereafter required to make annual or biennial reports to the governor or other state officials shall file copies of their reports with the governor on or before the fifteenth day of Sept. of each year, and it shall be the duty of the governor to furnish forthwith to the printer having the contract for the same, copy, for printing said report. Upon receipt of such copy the contractors shall acknowledge receipt to the governor and the period of time for printing and binding such report shall date from the day of receiving copy.

§ 14. Third Class—When Completed] It shall be the duty of the state printing commission in letting contracts under the third class to provide that the printing and binding of the third class shall be done by the party awarded such contract sixty days time after receiving copy for such reports exclusive of copy for letters of transmittal and index; and each contractor shall deliver each report at the office of the secretary of state without cost to the state for carriage, printed and bound as the state printing commission may direct. On failure to comply with these provisions by a contractor, such contractor shall be subjected to a fine, which is hereby made the duty of the state printing commission to deduct from the amount due such contractor on any contract in such sum and manner as the state printing commission may designate in the specifications regulating the letting of such contracts, and which such sums and the manner of computing the same shall be included in the written contracts executed for doing the work of this class. In making final settlement, the state printing commission shall certify to the state auditor, the date that each report so printed and bound was received by the secretary of state and in case of delays the amount of penalties shall be included in the voucher for payment for such work, and the state auditor shall deduct the amount of such penalties from the total amount due such contractor on the vouchers so certified to by the state printing commission.

Provided, further, that in case any work done under the third class shall be rejected by the state printing commission, they shall notify the contractor thereof within three days after receipt of such printing and binding. The state printing commission shall have printed on the blanks for proposals for bids for printing and binding of the third class the provisions of this section.

§ 15. Contract for Single Reports May be Awarded] The state printing commission in considering bids for the third class may award contracts for any single report separate provided, that such contract shall be awarded to the person bidding the greatest amount off the maximum rate allowed by law for printing and binding such report. It shall be the duty of the state printing commission in preparing blanks for proposals for printing and binding of the third class to designate the number of copies of each report to be printed and bound and to accept proposals for work for each report separately, it being

the intention of this section to give the state printing commission power to have all state reports printed and bound as promptly as possible.

§ 16. Legislative Manuals] The legislature shall at each session by joint resolution designate the number of legislative manuals to be printed and bound.

§ 17. Public Documents] Immediately after the adjournment of each session of the legislature the state printing commission shall have 100 copies of the public documents of the state of South Dakota bound in suitable binding, each of said set of documents to contain one copy of the reports of all state officials and boards printed under the contracts for the third class.

§ 18. Public Documents—How Distributed] The public documents shall be distributed as follows: One copy to each of the state and territorial libraries, and the library of congress.

One copy to each state officer and board making such report.

One copy to each public institution, and the state historical society of the state of South Dakota, and the balance to be retained by the secretary of state, and placed in the state library for the use of the state officers and members of the legislature.

§ 19. Session Laws—Number of] There shall be printed 4,000 copies of the laws and joint resolutions passed at each session of the legislature by the contractor having the contract for the printing and binding of the fourth class. 750 copies of such session laws shall be bound in full sheep; 1,000 copies in leather backs and corners; 1,250 copies in cloth cases and 1,000 copies in pamphlet binding.

§ 20. Fines and Penalties] The state printing commission shall provide in the contract for the printing of the fourth class a specific amount of penalty to be applied each day for failure on the part of the contractor to deliver the session laws bound as herein required after the expiration of ninety days from date of adjournment of each session of the legislature. Said penalty shall be in an amount of a fixed sum for each volume so delayed and for each day so delayed, and all such fines or penalties shall be applied by the state printing commission according to the contract for such class and the amount of such fine or penalty shall be deducted in the voucher for payment for work done under such contracts, and the state auditor shall draw no warrant for any amount deducted by the state printing commission in any voucher certified for payment by said state printing commission.

§ 21. Must Not be a Party to the Contract] The state printing commission is hereby prohibited as a body or any member thereof from becoming a party to any contract for printing for the state directly or indirectly, and any violation of this section shall be punishable by fine of not less than \$200.00 nor more than \$1,000.00, or by imprisonment in the county jail for not less than thirty days, nor more than one year.

§ 22. Shall Submit Estimates to Legislature] On the meeting of the legislature at any regular session thereof or as soon thereafter as possible, the state printing commission shall submit to that body an estimate of the probable cost of the printing and binding for the state for the ensuing two years.

§ 23. Provisions to be Contained in Specifications for Legislative Printing] The state printing commission shall provide among other provisions for the printing of the first and second class the following specifications:

For the first class. Paper to be used to be 30x44 inches, such weight as the state printing commission shall decide, cut or folded so as to make pages 7 1-2 by 11 inches; type to be used shall be long primer made up into pages 30 ems pica measurement wide and 51 ems pica measurement long. Between the lines there shall be a space not exceeding 19 points of lead and each full page must contain twenty lines. Provided, that the titles may be set in such display type as will make it a neat and attractive job.

Second class specifications shall provide, that daily journals shall be printed on print paper twenty-five by thirty-eight inches and such weight as the state printing commission shall decide. The type to be used shall be solid brevier for all matter; and provided, that there shall not be to exceed two points of lead or slugs between the lines of type on any page of the daily or permanent journals in the make up of such journals. The type shall be set into pages made up twenty-five ems pica wide and forty-two ems pica in length.

The state printing commission shall have the permanent journals printed on machine finish or sized and calandered paper 25 by 38 inches of such weight as they may designate, and all composition shall be the same style as provided for printing the daily journals.

§ 24. Legislative Supplies] The state printing commission shall adopt such forms of blanks and other stationery for the use of the legislature as they may see fit, and shall have samples of such forms with the form number given to each to submit to all bidders who may desire to bid for printing and binding of the fifth class and the blank proposals which they shall prepare for the use of intending bidders shall contain a request for bids for a given number of each specified blank form; and also the number of letter heads and envelopes and other items of stationery they may decide to receive bids for, also the number or quantity of all items of stationery, ink, pens, penholders, legal cap, and all other materials necessary for the use of the legislature, and the proposals for the fifth class shall provide that the state printing commission may select any part of the whole of any bid and the bidder making such bid shall agree to furnish any part or the whole of his bid at the price designated in his proposal.

§ 25. Additional Legislative Supplies] The state printing commission is hereby authorized and empowered to provide for the legis-

lature during its session any additional stationery or printing not provided for by prior contract to include all printing and stationery, legislative hand books or other like supplies ordered by either or both houses, but in no case shall they award any such printing or supplies where a single purchase shall amount to over \$100.00 without receiving bids therefor.

§ 26. Appropriation] There is hereby appropriated annually out of the state treasury the sum of one thousand dollars to defray the expense of publishing notices for proposals for state printing and binding, furnishing notices for proposals for state printing and binding, furnishing blanks and stationery for use of the state printing commission, express and postage in distribution of session laws, supreme court reports, public documents and any other expense necessarily incurred by the state printing commission in carrying out the provisions of this act.

§ 27. Governor Shall Appoint Superintendent] The governor shall appoint a competent person thoroughly versed in the art of printing, qualified in all ways to superintend, inspect, and direct any work to be done under the provisions of this act who shall have full supervision of such work so far as directing the same and shall be the sole judge as to whether such work complies with and fulfills the provisions of any contract let under the same. The salary of such state printer shall be \$150.00 per month for the time actually engaged in the work of the state which time of service shall be determined by the state printing commission.

§ 28. Commission to Have Supervision] All printing to be done for the various departments of state and for appointive officers shall be done under the supervision of the state printing commission.

§ 29. Repeal] Sections 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 55, 58, and 59 of chapter 1 of the Revised Political Code of 1903 and all acts and parts of acts in conflict with this act are hereby repealed.

§ 30. Emergency] An emergency is hereby declared to exist, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1907.

CHAPTER 206

(S. B. 269)

RELATING TO PUBLICATION OF STATUTES

AN ACT Entitled an Act to Amend Section 52 of the Revised Political Code, 1903, Relating to Publication of Statutes.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Secretary of State] That section 52 of the Revised Political Code 1903, be amended so as to read as follows:

Section 52. In arranging the laws for publication the secretary of state shall prepare a full and complete index of all such laws, which index shall in all cases refer to the subject matter of the act, whether the same be an original enactment or an amendment.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. Emergency] Whereas an emergency exists and is hereby declared to exist, this act shall take effect and be in force from and after its passage and approval.

Approved March 5, 1907.

RAILROAD COMMISSIONERS

CHAPTER 207

(S. B. 43)

RELATING TO ORDERS OF THE BOARD OF RAILROAD COMMISSIONERS

AN ACT Relating to the Orders of the Board of Railroad Commissioners.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. In any action or proceeding wherein any order of the board of railroad commissioners shall in any wise come in question, the validity of such order shall be presumed, and it shall not be necessary to allege or prove any fact upon which the validity of such order depends, but the burden shall be upon the party claiming such order to be invalid to plead and prove the facts establishing such invalidity.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 4, 1907.

CHAPTER 208

(S. B. 215)

**RELATING TO SALARY OF BOARD OF RAILROAD COMMISSIONERS AND
THE SECRETARY OF THE BOARD**

AN ACT Entitled an Act to Amend Section 195 of the Revised Political Code Relating to the Salaries of Railroad Commissioners and Secretary of the Board of Railroad Commissioners.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 195 of the Revised Political Code be and the same is amended to read as follows:

Section 195. Salary] That the salary of such commissioners shall be fifteen hundred dollars each per annum, and the salary of the secretary shall not exceed fifteen hundred dollars per annum.

Approved March 9, 1907.

CHAPTER 209

(S. B. 207)

RELATING TO THE BOARD OF RAILROAD COMMISSIONERS

AN ACT Prescribing the Duties of the Railroad Commissioners Relating to the Examination of the Books and Accounts of Public Warehouses.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. May Enter Warehouse and Examine at Any Time] The state board of railroad commissioners are hereby empowered and directed to at any time enter any public warehouse during ordinary business hours, or any office in which the books and accounts of any public warehouse are kept, and shall have the power to examine all of the books relating to the transaction of business in such public warehouse either within or without the state; and it is hereby made the duty of each public warehouseman to give the said board of railroad commissioners free access to all such books and accounts upon demand.

§ 2. Resistance—Penalty] Any public warehouseman in the state of South Dakota who shall refuse access to his books and accounts, or shall hinder and delay said board of railway commissioners or any member thereof from examining the same, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not greater than one hundred dollars. And the board of railroad commissioners shall revoke the license of such public warehouseman.

§ 3. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1907.

CHAPTER 210

(S. B. 183)

MAKING THE ATTORNEY GENERAL LEGAL ADVISER OF THE BOARD OF RAILROAD COMMISSIONERS

AN ACT Providing for a Legal Adviser and Assistant for the Board of Railroad Commissioners.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Attorney General Legal Adviser] All legal proceedings prosecuted or defended by the board of railroad commissioners shall be conducted by or under the direction of the attorney general, who in person, or by a duly appointed assistant, shall have exclusive charge thereof, and all legal advice and counsel needed by said board shall be furnished upon request by the attorney general. Said board shall not be permitted to employ other counsel.

§ 2. Unlawful to Delegate Power to Other Person] It is hereby made unlawful for said board of railroad commissioners to delegate any of the powers conferred upon it, or the performance of the duties imposed upon it by law, to any other person except in cases where express authority has been given by statute.

§ 3. Assistant] Whenever it shall be made to appear to the governor that the board of railroad commissioners is unable to adequately inspect the public warehouses, and the manner of conducting business therein, and the public scales in the state, as required of said board, the governor is hereby authorized and empowered to appoint a suitable and competent inspector to aid said board in making such inspection, such appointment to be for such time as the governor shall designate. The person so appointed shall qualify by taking an oath of office and giving a bond to the state in the sum of one thousand dollars conditioned upon the faithful performance of his duties, and shall receive a salary of one hundred dollars per month and his necessary traveling expenses during the period of his employment necessarily and actually incurred in the performance of his duties. Such inspector shall report to the board of railroad commissioners at such time and in such manner as said board may require.

§ 4. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 5, 1907.

CHAPTER 211

(H. B. 240.)

REQUIRING RAILROAD COMMISSIONERS TO ASCERTAIN TRUE CASH
VALUE OF RAILROAD PROPERTY

AN ACT to Authorize, Empower and Require the Board of Railroad Commissioners in this State to Ascertain and Determine the True Cash Value of all the Property of Every Railroad Company in this State Used in the Operation and Maintenance of Their Respective Railways, and to Employ Experts and such Other Assistance as May be Necessary to Ascertain and Determine Such Value.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Board of Railroad Commissioners] That the board of railroad commissioners of this state is hereby authorized, empowered and required to ascertain and determine the true cash value of all the property of every railroad company in this state used in the operation and maintenance of their respective railways; and for the purpose of determining the true cash value of the property of each company, the board may, if deemed necessary, view and inspect the property of such company, and shall consider the reports filed in compliance with law as now furnished and the reports and the returns of the company filed in the office of any officer of this state and such other evidence or information as may have been taken or obtained bearing upon the true cash value of the property of such railroad company. In case of railroad companies which own or operate railroads partly within and partly without the state, the board shall only value the property within this state. In determining such value the value of the entire system, the mileage of the whole system and of the part within this state, together with such information, facts and circumstances as will enable the board to make a substantially just and correct determination may be considered. When the true cash value of the property of a railroad company within this state shall have been ascertained and determined the amount thereof shall be entered upon the books of the commissioners, kept for that purpose, opposite the name of the company and shall be, and constitute the true cash value of the entire property of such railroad company within this state.

§ 2. That such board shall commence such valuation on the first day of July, 1907, and continue until the same shall have been completed and that the same be completed as soon as practicable.

§ 3. May Employ Experts] That said board of railroad commissioners is hereby authorized and empowered to employ experts and such other assistance as may be necessary to properly ascertain and determine the true cash value of said railway property.

Approved March 2, 1907.

RAILROADS

CHAPTER 212

(S. B. 118)

RELATING TO RAILROAD COMPANIES

AN ACT Relating to Railroad Connections, Transfer Facilities, Joint Traffic, Joint Rates, and the Powers and Duties of the Board of Railroad Commissioners in Regard Thereto.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Railroad Companies] All railroad corporations shall, at all points of connection, crossing or intersection with the roads of other corporations, unite with such corporations in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage or freight whenever the same shall be ordered by the board of railroad commissioners, keep such depot or passenger house warmed, lighted and open to the ingress or egress of all passengers a reasonable time before the arrival and until after the departure of all trains carrying passengers on said railroad or railroads; and said railroad companies so connecting, crossing or intersecting, shall stop all trains at said depot at said connections, crossings or intersections for the transfer of passengers, baggage and freight when so ordered by the board of railroad commissioners, and the expense of constructing and maintaining such station house and platforms shall be paid by such corporations in such proportions as may be fixed by the order of the board of railroad commissioners. All common carriers subject to the provisions of this act shall provide at all points of connection, crossing or intersection at grade where it is practicable and necessary for the interest of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or track may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines and for the receiving, forwarding and delivering of passengers, property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rates or charges between such connecting lines or on freight

coming over such lines, but this shall not be construed as requiring any common carrier to furnish for another common carrier its tracks, equipment or terminal facilities without reasonable compensation; that each of said connecting lines shall pay its proportionate share of the building and maintenance of such tracks and switches as may be necessary to furnish the transfer facilities required by this act, and in case they cannot agree on the amount which each line shall pay, then said amount shall, upon application by either party, be determined and adjusted by the board of railroad commissioners and either party shall have the right to appeal from the order of said board, fixing the amount so to be paid to the circuit court of the county where said transfer facilities are furnished, by serving a notice in writing on the adverse party within ten (10) days after the making and filing of such order by said board, and upon the service of such notice there shall be pending in said circuit court a civil action for the adjustment and determination of the amount to be paid by each carrier for the expense of the building and maintenance of said transfer facilities. Pleadings shall be made and filed in said action in conformity to those required by law and rules of practice in said court, and said cause shall be tried in the manner provided for the trial of civil actions in the circuit courts of this state. For the purpose of making an order requiring railway companies to unite and connect their tracks as herein provided the board of railroad commissioners may employ an engineer to survey the place of the proposed intersection and make a plat of the ground and furnish specifications to be followed by said companies which may be incorporated into and made a part of the order requiring such connecting tracks to be built.

§ 2. Through Joint Rates] All railway companies doing business in this state shall, upon demand of any person or persons interested, or upon demand of the board of railroad commission, establish reasonable and joint through rates for the transportation of freight between points on their respective lines within the state. Carload lots shall be transferred without unloading from the cars in which such shipments were first made unless such unloading into other cars shall be done without charge therefor to the shipper or receiver of such carload lots, and such transfer shall be made without unreasonable delay under such contract arrangements as such connecting companies may make, or under such rules as the board of railroad commission may prescribe as hereinafter provided in this act. Less than carload lots shall be transferred into the connecting railway cars at cost, which shall be included in and be made a part of the joint rates adopted by such railway companies or established as provided by this act. When shipments of freight to be transported between different points in this state are required to be carried by two or more railway companies operating connecting lines such railway

companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road.

§ 3. Duty of Railroad Commissioners] In the event that said railway companies fail to establish through joint rates or fail to establish and charge reasonable rates for such through shipments or fail to establish between themselves the rates for such through shipments, or fail to establish between themselves the rates and terms upon which cars of one company shall be transferred in such through shipments from the line of one company to the other and returned, or fail to provide for the convenient and prompt transfer of such through freight from the cars of the receiving company to those of the connecting line, it shall be the duty of the board of railroad commissioners of this state, and said board is hereby directed, upon the application of any person or persons interested, to establish joint rates for the shipment of freight and cars over any two or more connecting lines of railroad in this state, and to prescribe reasonable rules under which any such cars so transferred shall be returned, and in establishing, changing or revising any such rates they shall take into consideration the average of rates charged by said railway companies operating said connecting lines for joint interstate shipments for like distances. The rates established by said board shall go into effect within ten days after the same are promulgated by said board, and from and after that time the schedule of rates so established shall be prima facie evidence in all the courts of this state that such rates are reasonable through rates for the transportation of freight and cars upon the railroads for which such schedule shall have been fixed.

§ 4. Board Must Notify Railroad Companies] Before the promulgation of such rates or rules as above provided the board of railroad commissioners shall notify the railroad companies interested in the schedule of joint rates fixed by them and shall give said railroad companies a reasonable time thereafter to agree upon a division of charges provided for in such schedule, and in the event of the failure of the railway companies to agree upon such division and to notify the board of such agreement, said board shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by the board shall in all controversies or suits between the railroad companies interested be prima facie evidence of the just and reasonable division of such charges.

§ 5. Unreasonable Charges—Penalty] Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this state is hereby prohibited and declared to be unlawful, and every person or company violating the provisions

of this section shall be subject to the penalties prescribed in section 442 of the Political Code of the Revised Codes of 1903.

§ 6. How Construed] Nothing herein contained shall be construed as requiring any railroad company to send its cars over the line of railroad of another company when its own line of railroad runs to and reaches the point of destination or the point of connection with another line of railroad on which such point of destination is located, or to use its tracks or terminal facilities at terminal points for the handling of cars or traffic of another or competing company; provided that in no case shall the charges for transportation exceed the established through joint rates between any two points.

§ 7. Cannot Limit Liability] Whenever any property is received by any common carrier, subject to the provisions of this act, to be transported from one place to another within this state it shall be unlawful for such common carrier to limit in any way the common law liability with reference to such property while in its custody as a common carrier, such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property.

§ 8. Repeal] All acts or parts of acts in conflict with any provision of this act are hereby repealed.

Approved February 26, 1907.

CHAPTER 213

(H. B. 50)

RELATING TO SCHEDULE OF MAXIMUM RATES AND FARES

AN ACT Entitled an Act to Amend Section 450, Revised Political Code of 1903, Relating to a Schedule of Maximum Rates and Fares and Other Things.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 450 of the Revised Political Code of 1903 be and the same is hereby amended to read as follows:

Section 450. Powers and Duties of Board of Railroad Commissioners] The board of railway commissioners of this state are hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum fares and rates of charges for the transportation of passengers, freight and cars on each of said railroads, and said power to make schedules shall include the power of classification of all such freights, and it shall be the duty of said commissioners to make such classification. Provided, the maximum compensation per mile for the transportation of any person with ordinary baggage, not

exceeding one hundred and fifty pounds, shall not be greater than two and one-half cents per mile between points where the distance traversed is entirely within this state, except upon narrow gauge railroads, and said railroad commissioners shall for the purpose of making a maximum fare and charges for the transportation of passengers and freight, classify said railroads as far as practicable according to the gross amount of their respective annual earnings per mile within the state for the three years preceding the time of making the classification, and said classification may be changed from time to time as the railroad commissioners may order. Said schedules so made by said commissioners shall in all suits brought against such railroad corporations, wherein is in any way involved the charges of any such railroad corporation for the transportation of passengers and freight or cars or unjust discrimination in relation thereto, be deemed and taken in all courts of this state as prima facie evidence that the rates and passenger fares therein fixed are reasonable and just maximum rates of charges for the transportation of passengers, freight and cars upon the railroads for which said schedules may have been respectively prepared. Said commissioners shall from time to time, and as often as circumstances may require, change and revise said schedules. When any schedule shall have been made or revised as aforesaid, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in two public newspapers published, one in the county of Minnehaha and one in the county of Lawrence in this state, which notice shall state the date of the taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed copy of said revised schedule shall be conspicuously posted by such common carrier in each freight office, and passenger depot upon its line or lines. All such schedules, so made, shall be received and held in all such suits as prima facie the schedule of said commissioners without further proof than the production of the schedule desired to be used as evidence, with a certificate of said railroad commissioners, that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that notice of making the same has been published [as] required by law, provided, that before finally fixing and deciding what the original maximum rates and fares and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers published, one in the county of Minnehaha and one in the county of Lawrence, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates, fares and classifications, and they shall at such time and place and as soon as practicable, afford to any person, firm or corporation or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to the said

commissioners on the subject of determining and fixing such maximum rates and classifications.

Approved March 4, 1907.

CHAPTER 214

(H. B. 119)

RELATING TO RAILROAD STATIONS

AN ACT Entitled an Act Making it Unlawful for any Railroad Corporation, or Company, or Common Carrier, to Abandon any Established Station, Remove the Depot, or to Withdraw an Agent Therefrom Without the Written Consent of the Board of Railroad Commissioners, and Providing Penalties for the Violation Thereof.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Unlawful to Abandon Station] That it shall be unlawful for any railroad corporation, company or common carrier, now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this state, to abandon any station on its line of railroad when once established, to remove the depot therefrom, or withdraw any agent therefrom without the written consent of the board of railroad commissioners so to do. The board of railroad commissioners, may, by written order, authorize the withdrawal of such agent at stations where the business is periodical, during such time as there is no business thereat, or the abandonment of any station where the business from outgoing and incoming traffic is less than one thousand dollars (\$1,000.00) for any consecutive three months.

§ 2. Violation—Penalty] Any railroad corporation, company or common carrier violating any of the provisions of this act, shall forfeit to the state of South Dakota, for each such violation, not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00); and each period of thirty days that any such violation shall continue, shall be deemed to constitute a separate offense.

§ 3. Repeal] All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

§ 4. Emergency] Whereas, an emergency exists and is hereby declared to exist, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved February 28, 1907.

CHAPTER 215

(H. B. 114)

REQUIRING RAILROAD COMPANIES TO PAY DOUBLE DAMAGES IN CERTAIN CASES

AN ACT Requiring Railroad Corporations to Pay Double the Amount of Damages Incurred from Loss of Property, Injured or Destroyed by Fires Communicated by Locomotive Engines, or from the Burning of Grass, Weeds or Rubbish on Right of Way by Employees of such Corporations, in Certain Cases.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Railroad Companies] Each railroad corporation owning or operating a railroad in this state, shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated directly or indirectly by locomotive engines in use upon the railroad owned or operated by such railroad corporation, or by the burning of grass, weeds or rubbish on right of way by employees of such corporation, and each such railroad corporation shall have an insurable interest in the property upon the route of the railroad owned or operated by it, and may procure insurance thereon in its own behalf for its protection against such damages.

§ 2. Settlement Within Sixty Days] Whenever the property owned by any person or corporation shall be injured or destroyed by fire communicated by locomotives in use upon any railroad owned or operated by a railroad corporation, or by the burning of grass, weeds and rubbish on the right of way by employees of such corporation, so as to render the railroad corporation liable, under section 1 of this act, or otherwise the owner of such property injured or destroyed may recover damages for such loss, and to recover the same it shall only be necessary for him to prove the loss of or injury to his property. If such corporation fails or neglects to pay such damage within sixty days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by such corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by him in any court of competent jurisdiction. If such company shall, within sixty days, offer in writing to pay a fixed sum, being the full amount of the damages sustained and the owner shall refuse to accept the same, then in any action thereafter brought for such damages when such owner recovers a less sum as damages than the amount so offered then such owner shall recover only his damages, and the railway company shall recover its costs.

Approved February 25, 1907.

CHAPTER 216

(S. B. 12)

RELATING TO RECIPROCAL DEMURRAGE

AN ACT Regulating the Handling of Freight in Carload Lots by Railroad Companies, Shippers and Consignees, and Imposing, Regulating and Equalizing Charges and Penalties for the Use and Detention of Cars and Failure to Furnish Cars and Transport the Same.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duties of Railroad Company] That any railroad company engaged as a common carrier in the transportation of freight in carload lots, upon the request of any shipper to furnish one or more freight cars to be loaded for shipment over the railroad operated by such railroad company, shall seventy-two hours thereafter, Sunday and legal holidays excepted, provide at the named loading point the car or cars so required, and for twenty-four hours delay or fraction thereof, on the part of such railroad company in so placing such car or cars, at such loading point beyond said allowed period, such railroad company shall become indebted and on demand shall pay to such shipper the sum of one dollar for each and every car not so placed at such loading point within the time above named. Provided, that any shipper requiring ten or more cars placed at his disposal at the same shipping point at the same time, shall give to any railroad company from which such cars are desired at least six days notice of the time and place when and where such cars are desired.

§ 2. Must Start Cars Toward Destination] Any railroad company mentioned in section one of this act, upon receipt of notice from a shipper that one or more cars have been loaded by such shipper and are ready for delivery to such company at the place of loading thereof, to be carried on the road of such company towards the destination thereof, shall remove such car or cars from such loading point and forward the same toward destination within twenty-four hours after receiving such notice. Sundays and legal holidays excepted; and for every delay of twenty-four hours, or fraction thereof, after the expiration of the period herein allowed for the removal thereof, such railroad company shall become indebted and on demand pay to such shipper the sum of one dollar for each and every car not so removed within the period herein provided.

§ 3. When Cars Received from Connecting Railroads] Any railroad company mentioned in section one of this act which shall receive from a connecting railroad company one or more cars of freight consigned to any point on or beyond its line shall, within twenty-four hours after such car or cars are offered to it, or are placed on its transfer or other tracks, forward said car or cars over its railroad towards destination; and for every delay of twenty-four hours or frac-

tion thereof on the part of said railroad company in forwarding said car or cars, beyond said allowed period of twenty-four hours, said railroad company shall become indebted and upon demand shall pay to the consignee of such car or cars the sum of one dollar for each and every car so received and not forwarded upon its lines within the time above allowed.

§ 4. When any railroad company in this state shall have received from any shipper, or from a connecting railroad, for shipment over its railroad one or more cars of freight, it shall be the duty of such company receiving such car or cars of freight within twenty-four hours thereafter to start the same forward from the place of shipment towards the point of destination, and, after being started forward, such car or cars of freight shall be continued in transit towards the destination thereof at a rate of not less than an average speed of 50 miles per day of twenty-four hours, and upon the failure of such railroad company to transport such car or cars at the speed herein indicated such railroad company shall become indebted, and on demand shall pay to the consignee thereof one dollar for each and every car for each twenty-four hours or fraction thereof consumed in the transportation of said car or cars in excess of the time herein prescribed, and in ascertaining the time consumed in the shipment of such car or cars the time shall begin to run twenty-four hours after the date of the bill of lading or receipt given for said car or cars by said railroad company, which bill of lading or receipt shall be received by the courts of this state as prima facie evidence of the time when said car or cars were received by such company.

§ 5. Freight Must be Delivered to Consignee] It shall be the duty of every railroad company mentioned in section one of this act to deliver at the usual place of unloading by the consignee all cars of freight hauled by it for delivery to said consignee within twenty-four hours, Sundays and legal holidays excepted, after the same shall have reached the yards of the railroad company at said point of destination, and for each and every delay of twenty-four hours or fraction thereof in so delivering the same after the expiration of the time herein prescribed said railroad company shall become indebted and on demand shall pay to the consignee the sum of one dollar for each and every car not so delivered within the time herein allowed.

§ 6. Duty of Shipper] It shall be the duty of any shipper in compliance with whose request any railroad company mentioned in section one of this act has placed one or more cars at the usual loading point of said shipper, as indicated by said shipper to fully complete the loading thereof ready for redelivery to said railroad company within forty-eight hours after the time designated in his request for such car or cars, Sundays and legal holidays excepted, which full period for loading is allowed the shipper free from demurrage charges, and for every twenty-four hours or fraction thereof of delay

beyond said period in so loading said car or cars such shipper shall become indebted and on demand shall pay to said railroad company the sum of one dollar for each and every car so placed and not loaded and ready for redelivery within the time allowed herein. Such car or cars when so placed shall be in good and fit condition to receive, hold and convey the kind of freight to be loaded without injury to or loss of any of such freight and no penalty shall accrue against any such shipper for any car placed which is not in such good and fit condition. If the railroad company shall fail to provide any car at the time or place specified in any application therefor the shipper may elect not to take such car, and in that event such company shall become indebted and on demand pay to such shipper the sum of five dollars for such car. If, however, the car or cars ordered are provided at the time and place specified and the shipper fails to begin loading within forty-eight (48) hours after the expiration of free time the railroad company shall consider the car or cars released and may assess and collect five dollars on each car which a shipper so detains and fails to load. If a shipper, after ordering a car or cars for the shipment of freight and said car or cars have been placed for loading by the railroad company at the point designated desires to release said car or cars he may do so by notifying the railroad company, but no free time shall be allowed and said shipper shall pay to the railroad company one dollar for each twenty-four (24) hours or fraction thereof on each car so ordered and released.

§ 7. Duty of Consignee] It shall be the duty of the consignee of each and every car delivered by any railroad company mentioned in section one of this act, at the usual place of unloading by the consignee to fully unload such car or cars within forty-eight hours, Sundays and legal holidays excepted, from the time the same shall be placed at the usual unloading point of the consignee, which full period is allowed the consignee for unloading free from demurrage charges, and for each and every delay of twenty-four hours, or fraction thereof, on the part of the consignee in unloading such car or cars beyond said period the consignee shall become indebted and on demand pay to the railroad company delivering such car or cars the sum of one dollar for each and every car not so unloaded within the time herein prescribed.

§ 8. Bills of Lading] For all shipments of freight in carload lots on the railroads mentioned in section one of this act proper bills of lading showing the date of delivery to such railroad company, the shipper's weights, if given by the shipper, and the marks and numbers of each car so shipped shall be issued by the railroad company and delivered to the shipper at the time of receiving such car or cars, which bill of lading, when offered by any party in any cause pending in any court of this state, shall be received and admitted in evidence by such court as prima facie evidence of the time when delivery of

such car or cars was made by the shipper to such railroad company and the shipper's weights, if given, and the contents thereof, when so delivered to such company, and such railroad company shall be subject to a penalty of one hundred dollars for its neglect or refusal to furnish such shipper such bill of lading for each car so received by it, such penalty to be recovered, with costs of suit, by the shipper of such car or cars from the railroad company so in default.

§ 9. Legal Notice] Legal notice as referred to in this act may be either actual or constructive. When the consignee or agent is personally served with notice of arrival at or before 10 o'clock a. m. of any day free time begins at that hour, and if such consignee or agent is served with such notice after 10 o'clock a. m. and before 6 o'clock p. m. of any day free time begins at 7 o'clock a. m. the day following. Constructive notice consists of posting notice by mail to consignee. When this method of notice is adopted there shall be twenty-four hours additional free time, provided, however, that where in any case notice of arrival is given by mail the consignee shall make oath that neither he, his agent or employees have received such notice, then he will be, *prima facie*, held not to have received legal notice by reason of the posting of said notice by mail.

§ 10. Movement May be Suspended—When] The period during which the movement of freight or furnishing cars is suspended on account of accident or any cause not within the power of the railroad company to prevent, or during which the loading or unloading of freight by shipper or consignee is delayed by reason of inclement weather which would make loading or unloading impracticable, or any cause not in the power of said shipper or consignee to prevent, shall be added to the free time allowed in this act and counted as additional free time.

§ 11. Payment of Demurrage Not to Offset Claim] The payment by said railroad company of any demurrage provided for in this act shall in no way invalidate or offset any claim any shipper or consignee may have or make for damages occasioned by delay on the part of such railroad company or other cause, but shall be a further remedy and in addition to any already existing, nor shall anything herein contained be held to lessen the duties of any common carrier in the shipment of live stock or perishable property. Such railroad companies shall not be required to perform any service under this act for or at the request of any shipper or consignee who is in arrears for any proper demurrage or freight charges due to such railroad, for which proper statement has been rendered and demand made until after such arrears have been paid or secured.

§ 12. Penalty] If any common carrier, subject to the provisions of this act, shall do, cause or permit to be done anything herein prohibited, or shall omit to do anything in this act required, it shall be liable to the person or persons injured thereby for the amount

of damages sustained in consequence, together with costs of suit and a reasonable attorney's fee, to be fixed by the court, which shall be taxed and collected as part of the costs in the case, but in all cases demand in writing shall be made for the money damages sustained before action is brought for a recovery under this section, and no action shall be brought until thirty days after such demand.

§ 13. Duty of Board of Railroad Commissioners] The board of railroad commissioners of the state of South Dakota shall in extraordinary cases, where justice demands, have the power on its own motion or upon petition showing good cause, to suspend by written order the operation of this act or any part thereof as to one or more railroads for a definite time not exceeding sixty days in any one year.

§ 14. Reports] Every railroad company doing business in South Dakota shall file with its annual report to the board of railroad commissioners a sworn, itemized statement of the whole amount of money paid or received for demurrage by such railroad company in South Dakota during the previous year, showing therein to whom paid or from whom received, when and for what purpose such demurrage was paid or received.

§ 15. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 15, 1907.

CHAPTER 217

(H. B. 130)

REGULATING THE CONSTRUCTION OF RAILROAD LINES

AN ACT Regulating the Construction of Railroad Lines.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Parallel Roads Prohibited] No railroad hereafter constructed in this state shall parallel any other line of railroad, already constructed, within eight (8) miles of the same, for a greater distance, in every one hundred (100) miles which it may build, than ten (10) miles, exclusive of its trackage in any corporate city or town, without first having, on notice to such competing road, obtained from the board of railroad commissioners of this state permission so to do.

§ 2. May Apply to Railroad Commissioners] Any railroad company desiring to construct a line of railroad in this state, and, having otherwise complied with all laws in force relevant thereto, may file with the railroad commissioners a plat of such road proposed to be constructed, stating the principal points through which it is desired

to construct such road, and thereupon the commissioners may, if satisfied that such road is desirable, and that there is probability of the same being constructed, grant a permit to such company to construct such road; and thereupon all the provisions of section 1 of this act shall apply to any other railroad which may seek to build into the same territory.

Approved February 20, 1907.

CHAPTER 218

(H. B. 55)

REQUIRING RAILROAD COMPANIES TO PAY DOUBLE DAMAGES FOR LIVE STOCK KILLED IN CERTAIN CASES

AN ACT Requiring Railroad Companies to Pay Double the Amount of Damage Incurred from Loss of Live Stock Killed or Injured Through the Negligence of Such Railroad Company in Certain Cases.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Railroad Companies] Any corporation operating a railway and failing to properly fence the same against live stock and keep the same in repair and maintain proper and sufficient cattle guards at all points where the right to fence or maintain cattle guards exists, shall be liable to the owner of any stock killed or injured by reason of the want of such fence or cattle guard, for the full amount of the damage sustained by the owner on account thereof, unless it was occasioned by his act or that of his agent; and to recover the same it shall only be necessary for him to prove the loss of or injury to his property. If such corporation fails or neglects to pay such damage within sixty days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by said corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damage actually sustained by him. If such railway company shall, within said sixty days, offer in writing to pay a fixed sum, being the reasonable market value of the animals so killed, and the owner thereof shall refuse to accept the same, then in any action thereafter brought for damages where such owner recovered a less sum as the value of the animals so killed than the amount so offered, then such owner shall recover only the actual value of such animals and the railway company shall recover its cost against such owner. No law of the state or any local or police regulation of any county, township, city or town relating to the restraint of domestic animals, or in relation to the fences of farmers or

land owners, shall be applicable to railway tracks, unless specifically so stated in such law and regulation. Upon depot grounds necessarily used by the public and the corporation, the operating of trains at a greater rate of speed than eight miles an hour where no fence is built shall be negligence, and shall render such corporation liable for all damages occasioned thereby in the same manner and to the same extent, except as to double damages, as in cases where the right to fence exists.

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 20, 1907.

CHAPTER 219

(H. B. 25)

RELATING TO LIABILITY OF COMMON CARRIERS TO THEIR EMPLOYEES

AN ACT Relating to Liability of Common Carriers Engaged in Commerce in the State of South Dakota, to Their Employees.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That every common carrier engaged in trade or commerce in the state of South Dakota shall be liable to any of its employes, or in case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents or employes, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, road-bed, ways or works.

§ 2. That in all actions hereafter brought against any common carrier to recover damages for personal injuries to an employe, or where such injuries have resulted in his death, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was less than the negligence of the employer, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe. All questions of negligence and contributory negligence shall be for the jury.

§ 3. That no contract of employment, insurance, relief benefit or indemnity for injury or death entered into by or on behalf of any employe, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar or defense to any action brought to recover damages for personal injuries

to or death of such employe. Provided, however, that upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed towards any insurance, relief benefit or indemnity that may have been paid to the injured employe, or in case of his death, to his personal representative.

§ 4. That no action shall be maintained under this act, unless commenced within two years from the time the cause of action accrued.

§ 5. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 6. There being no adequate laws upon this subject, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 20, 1907.

CHAPTER 220

(H. B. 54)

LIMITING THE HOURS OF SERVICE OF RAILWAY EMPLOYEES

AN ACT Entitled an Act Limiting the Working Hours Required of or Permitted to Certain Employes of Common Carriers, and Prescribing the Powers and Duties of the Board of Railroad Commissioners in Regard Thereto.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. No common carrier, nor any officer nor agent thereof, shall require or permit any employe engaged in or connected with the movement of any train to remain on duty more than sixteen consecutive hours, or require or permit any such employe who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty, or require or permit any such employe who has been on duty sixteen hours in the aggregate in any twenty-four hour period to continue on duty or to go on duty without having had at least eight hours off without duty within such twenty-four hour period.

§ 2. In any prosecution for a violation of the preceding section, it shall be a sufficient defense to show that the employe was prevented from reaching his terminal by any casualty occurring before he started on his trip, or by accident or unexpected delay of trains scheduled to make connections with the train on which such employe was serving.

§ 3. Any common carrier and any officer or agent thereof violating any of the provisions of section one of this act shall, upon con-

viction thereof, be punished by a fine of not less than \$100 or more than \$1,000.

§ 4. The Board of Railroad Commissioners shall fully investigate all cases of violation of this act, and for that purpose may subpoena witnesses, administer oaths, interrogate witnesses, take testimony and require the production of books and papers either within or without the state, and shall lodge with the proper states attorneys information of such violations as may come to its knowledge.

§ 5. The provisions of this act shall not be applied to relief or wreck trains.

§ 6. All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 13, 1907.

CHAPTER 221

(S. B. 6)

IN RELATION TO PASSES

AN ACT to Regulate, Restrain and Prohibit the Soliciting, Giving, Issuing and Accepting of Free Passes, Free Tickets, Franks and Other Free Privileges, and to Prevent Discrimination in the Issuing and Selling of Tickets, Passes, Franks and Other Privileges.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. No person, association, copartnership, railroad company, common carrier or corporation shall issue or give or offer to give to any person, any free ticket, pass, frank or privilege of any kind, which is withheld from any person, for the traveling accommodation or transportation of persons or property, or the transmission or communication of any message or information, for use within this state, nor give, issue or sell any such ticket, pass, frank or privilege to any person, for a less or different sum or consideration than is charged to any other person for a like or similar ticket, pass, frank, privilege or service.

§ 2. Nothing in this act shall be construed to prohibit common carriers from issuing and giving free personal transportation to their officers and employes and their families, or to any officer or employe of any other railroad company, and his family, when such officer or employe is in good faith upon the regular pay roll of such company; their regularly employed and acting physicians; and attorneys at law in good faith upon their regular pay roll at a salary of not less than \$500 per year; to ministers of religion and others engaged exclusively in religious and charitable work; to inmates of national homes or state

homes for disabled volunteer soldiers and sailors, including those about to enter and those returning home after discharge; to necessary caretakers of live stock in course of shipment and return; to employes on sleeping cars and express cars; linemen of telegraph and telephone companies and newsboys on trains; persons injured in wrecks and physicians and persons caring for or attending such persons; nor to prohibit the officer or employe of any telephone or telegraph company from communicating, free of charge, over the lines of his company, with any member of his immediate family. But no such free transportation shall be issued or given to any person when such person is a member of, employed by, or in any way connected with any political committee, or a candidate for or an incumbent of any office or position under the constitution or laws, or any ordinance of any municipality, of this state. Provided, that common carriers shall not be prohibited from carrying persons free to provide relief from storm, flood, epidemic or other calamity.

§ 3. Nothing in this act shall be construed to prohibit railroad companies from issuing excursion, commutation or long distance tickets, for transportation of persons, at special rates, but any such tickets shall be offered and sold at a uniform price, to all persons alike, without discrimination.

§ 4. No person, other than those excepted in this act, shall solicit, accept or use any free ticket, pass, frank or privilege as defined herein, whether the same shall have been issued before or after the passage and approval of this act; and no person, association or corporation, or representative or agent thereof, shall accept for the transportation of persons or property, or the transmission or communication of any message or information, nor recognize as valid, nor honor in any manner, any such free ticket, pass, frank or privilege.

§ 5. Any person, association, copartnership, common carrier or corporation, issuing or giving any free ticket, pass, frank or privilege permitted to be given by this act, shall, on or before the tenth day of July and the tenth day of January of each year, file with the board of railroad commissioners a statement sworn to by the person, or an officer, agent or attorney of the corporation making it, giving a list of all such free tickets, passes, franks or privileges issued or given under the provisions of this act, during the six months preceding the first day of the month in which such statement is made, with the date of issue, name of the person to whom issued, and kind of free ticket, pass, frank or privilege issued; which statement the board of railroad commissioners shall include and publish in their annual report.

§ 6. Any violation of any of the above provisions shall be punished by a fine of not more than one thousand dollars, nor less than two hundred dollars, or by imprisonment in the penitentiary not more than five years nor less than one year, or by both such fine and imprisonment.

§ 7. No person shall be privileged from testifying in relation to anything herein contained, but no such person shall thereafter be prosecuted for any offense concerning which he may have been required to testify, and the testimony so given shall not be used in the prosecution of any such person in any criminal action whatever, except in actions for perjury in giving such testimony.

§ 8. All acts and parts of acts, except section 463 of the Revised Political Code of 1903, in conflict with this act, are hereby repealed.

§ 9. Whereas, there is now no adequate provision of law to prevent the giving or use of free tickets, passes, franks or privileges, as provided herein, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 9, 1907:

REFORM SCHOOL

CHAPTER 222

(S. B. 225)

CHANGING THE NAME OF THE REFORM SCHOOL AT PLANKINTON

AN ACT Changing the Name of the South Dakota Reform School.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. How Changed] The name of the Reform School at Plankinton, South Dakota, shall hereafter be South Dakota Training School.

§ 2. How Construed] Whenever and wherever the words "Reform School" appear in any of the laws of the state of South Dakota, the same shall be construed to mean and include the words "South Dakota Training School."

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 223

(H. B. 145)

PROVIDING FOR THE TRANSFER OF PERSONS FROM THE REFORM SCHOOL TO THE NORTHERN HOSPITAL

AN ACT to Provide for the Transfer of Feeble Minded and Epileptic Youth from the Reform School to the Northern Hospital.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Superintendent] It shall be the duty of the superintendent of the reform school to report to the state board of charities and corrections, all cases of epileptics and of apparently feeble minded youth that have been committed to the reform school and are inmates of the same. The said superintendent shall also report all facts within his knowledge pertaining to the history of each case.

§ 2. Duty of Board of Charities and Corrections] It shall be the duty of the state board of charities and corrections to investigate each case so reported, and if, in the opinion of said board, an epileptic or feeble minded boy or girl is an inmate of the reform school it shall be the duty of said board to order such epileptic or feeble minded boy or girl taken before a county court or circuit court for examination.

§ 3. Court to Determine.] The court before which a supposed epileptic or apparently feeble minded youth has been taken upon the order of the state board of charities and corrections shall proceed to hear and determine the case. If in the opinion of the court, from all the facts presented and testimony given, the youth is an epileptic or is feeble minded and is a fit subject for commitment to the Northern Hospital at Redfield the court shall order such youth transferred from the Reform school to the Northern Hospital and committed to the care and custody of the superintendent of said Northern Hospital.

§ 4. Costs—By Whom Paid] All costs of proceedings under this act before the court and all costs of transportation of an inmate of the reform school to the Northern Hospital, under the order of the court, shall be paid out of the funds of the reform school.

§ 5. Emergency] An emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage and approval.

Approved February 25, 1907.

SCHOOL AND PUBLIC LANDS

CHAPTER 224

(H. B. 117)

AUTHORIZING THE COMMISSIONER OF SCHOOL AND PUBLIC LANDS TO SELL PINE TIMBER GROWN UPON SCHOOL AND PUBLIC LANDS

AN ACT Entitled an Act to Authorize the Commissioner of School and Public Lands to Sell Pine Timber Grown Upon School and Public Lands of this State.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Commissioner Authorized to Sell Certain Timber] The commissioner of school and public lands is hereby authorized to sell all matured and other pine timber grown or growing upon the school and public lands of the state of South Dakota when the same is liable to waste or to be destroyed by pine bugs, beetles or any other pine timber destroying insect.

Provided, that such sale shall be made under and by direction of the board of school and public lands, under such rules and regulations as it may establish to properly carry into effect the provisions of this act, additional to and not inconsistent herewith. When such sales are ordered to be made the said commissioner of school and public lands shall execute and deliver to the purchaser a permit to enter upon the land upon which the timber is situated, and to cut and remove such timber under the rules and regulations of the said board.

§ 2. Rules and Regulations] All sales of timber so made by the commissioner of school and public lands shall be made for cash, and the purchaser of such timber shall be allowed reasonable time for removing such timber, not exceeding five years from the date of such purchase. Provided, however, that before any sale of such timber shall be made, or any permit to cut or remove the same shall be granted by the commissioner of school and public lands, an estimate of the same shall be made by the board of school and public lands to determine the extent and quantity of timber to be sold, and the timber so sold shall be cut and removed under such rules and regulations as the board shall deem proper for the protection of the remaining young timber growing upon such school and public lands.

§ 3. Must be Sold for Cash—Place of Sale] All timber sold under the provisions of this act shall be sold to the highest bidder at public auction. All such sales shall be held at the capitol building

in the city of Pierre, South Dakota, unless in the judgment of the said board of school and public lands it is deemed to be to the best interest of the state that such sale should be made at some city or town within the state nearer to the locality in which the said timber is situated.

§ 4. Notice] When a sale of timber is decided upon to be made under the provisions of this act the commissioner of school and public lands shall publish notice thereof in newspapers of general circulation of the county or of the vicinity in which the land is situated, upon which said timber is located once a week for five consecutive weeks, prior to the date of sale.

§ 5. Moneys—How Disposed of] All money received by the commissioner of school and public lands for the sale of timber under the provisions of this act shall be paid by him into the permanent school fund of the state.

§ 6. Emergency Clause] There being no provision of law authorizing the sale of matured pine timber growing on school and public lands in this state, an emergency is hereby declared to exist, and therefore this act shall be in force from and after its passage and approval.

Approved February 25, 1907.

CHAPTER 225

(S. B. 82)

RELATING TO FEES DERIVED FROM LEASE AND SALE OF SCHOOL AND PUBLIC LANDS

AN ACT Entitled an Act to Amend Section 393, Article 1, Chapter 6 of the Revised Political Code of 1903, Relating to Fees Derived From the Lease and Sale of School and Public Lands.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 393, article 1, chapter 6 of the Revised Political Code of 1903 be and the same is hereby amended to read as follows:

Section 393. Fees—How Remitted—How Credited] The fees provided for in the preceding section shall be remitted by the several county treasurers, whose duty it is to collect the same, to the state treasurer, to be by him credited to the interest and income fund of the class from which such fees were derived.

§ 2. Repeal] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. Emergency] An emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage and approval.

Approved March 6, 1907.

CHAPTER 226

(H. B. 144)

PROVIDING FOR CLASSIFICATION AND SALE OF INDEMNITY, COMMON SCHOOL AND ENDOWMENT LANDS

AN ACT Entitled an Act Providing for the Classification and Sale of Indemnity, Common School and Endowment Lands in the State of South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Classification] The board of school and public lands shall classify all endowment, indemnity and common school lands into three classes, as follows, to-wit:

Class 1: To include all lands which are more valuable for agricultural than any other purpose;

Class 2: To include lands probably suitable for agricultural purposes, but which may be more valuable for timber or other purposes;

Class 3: To include lands suitable for grazing only;

The said board shall complete said classification and file its report of same in the office of the commissioner of school and public lands as soon as the same can conveniently be done. The said report shall contain a description of each tract of land set apart for endowment, indemnity or common school purposes and shall designate the classification of each and every tract.

§ 2. Duty of Board] It shall be the duty of the board of school and public lands, on or before February 1st in each year, to direct the selection as nearly as may be practical of not less than fifty thousand acres from the common school, endowment or indemnity lands of the state, to be offered for sale, beginning with the year 1908 and continuing annually thereafter until one-fourth of said lands shall have been sold; provided, that if at the time when such direction is to be made in any year there shall be in the state treasury a sum in excess of one hundred thousand dollars, proceeds of the sale of said lands not loaned out upon interest, then the selection of said lands for that year shall be deferred for one year.

§ 3. Certain Lands Not Affected] Nothing in this act shall be deemed to apply to or affect lands set apart for capitol building purposes.

§ 4. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 6, 1907.

CHAPTER 227

(H. B. 198.)

RELATING TO ARTESIAN WELLS UPON SCHOOL AND PUBLIC LANDS

AN ACT Entitled an Act to Promote the Sinking of Artesian Wells Upon School and Public Lands.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Former Lessee Shall Have Preference] Every lessee of school or other public lands in the state of South Dakota, who shall during the term of his lease of such lands sink thereon an artesian well at least one inch in diameter and secure a flowing well of water at his own expense, using in the construction thereof piping to be approved by the board of county commissioners of the county in which such lands are located and shall leave such well in good order for benefit of state when lease expires, then such land must if not sold be again offered for rent for a period of five years if same can be rented for a good fair rental and in case of releasing such property, the former lessee shall have the preference, if he will pay as much therefor as any other bidder, but in the event that such property should be rented for a larger rental that such former tenant could afford to pay or if such property should be sold, then the value of such well must be appraised under the direction of the board of county commissioners at its fair and reasonable value and such new lessee or purchaser of such property shall pay to the owner of such well one-half of the appraised value thereof and such new lessee or purchaser shall have credit upon his lease, or his purchase for the amount so paid to the owner of such well.

Approved March 7, 1907.

CHAPTER 228

(H. B. 6)

RELATING TO PATENTS TO STATE LANDS

AN ACT to Amend Section 385 of the Revised Political Code of 1903, as Amended by Chapter 145 of the Laws of 1905, Relating to Patents to State Lands.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 385 of the Revised Political Code of 1903, as amended by Chapter 145 of the Laws of 1905, be amended to read as follows:

Section 385. When full payment has been made for any tract sold, and not before, a patent for such tract, executed in the name of the state by the governor, and attested by the commissioner of school and public lands, under the seal of his office, shall be made out and delivered by the commissioner of school and public lands to the auditor of the county in which the land is situated, for the party entitled thereto.

Such patent shall run to the original purchaser, if he be living and his interest in the land has not been assigned, but in case a legal transfer of his interest has been made, then such patent shall run to the actual owner of such interest, and in case of the death of the original purchaser, then such patent shall run to his heirs or devisees, as the decree of the county court may show. In cases where the patent does not run to the original purchaser, the applicant must establish his right and title to the patent by documentary evidence approved by the states attorney and by the treasurer and auditor of the county in which the land is situated, the same to be filed with the application for the patent.

§ 2. All acts or parts of acts in conflict with this act are hereby repealed.

§ 3. Whereas, there is now no sufficient law in force providing for the issuance of patents for school and public lands, therefore an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 8, 1907.

CHAPTER 229

(H. B. 275)

DIRECTING THE BOARD OF REGENTS TO SELECT LANDS FOR EXPERIMENTAL FARM PURPOSES

AN ACT Entitled an Act Directing the Board of Regents of Education to Make Selections of State or School Lands for Experimental Farm Purposes.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Board of Regents] The board of regents of education is hereby directed to select one section of common school endowment or indemnity lands located within the county of Butte or Meade and one section of such common school endowment or indemnity lands located within Lyman or Stanley counties and one section of such unappropriated state or school land located within McPherson county upon each of which the said board shall establish a farm for experiments in dry farming, and the said board is authorized to plow the said lands, and to make permanent improvements thereon, and the said board shall be permitted the free use of such lands for such experimental farm purposes so long as the same is so occupied; provided that all profit which may accrue from the cultivation of such lands in excess of the cost of cultivating the same shall be paid into the fund to which the land selected belongs.

§ 2. Emergency] An emergency is hereby declared to exist and this act shall be in force from and after its passage and approval.

§ 3. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

CHAPTER 230

(H. B. 293)

RELATING TO UNAPPROPRIATED PUBLIC LANDS

AN ACT Entitled an Act Placing Under the Control of the Board of Regents of Education, the Remainder of the Educational and Charitable Lands, for the Support of Sub-stations for Prosecuting Experiments in Agriculture.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Lands Set Apart to Regents of Education] There is hereby apportioned and set apart to the board of regents of education of the state of South Dakota, for the maintenance, support, use and benefit of such sub-stations for experiments in agriculture as are now, or

hereafter may be established by law at various points in the state of South Dakota, all of the balance and residue of the unappropriated lands now or hereafter selected, being about twenty-five thousand acres, more or less, granted by an act of congress of the United States of America, approved February 22, A. D. 1889, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the Union on an equal footing with the original states and to make donations of public lands to such states," whereby congress donated to South Dakota certain lands, "for such other educational and charitable purposes as the legislature may determine." That all of the balance and residue of said lands now or hereafter to be selected amounting to about 25,000 acres, more or less, now unappropriated, be and the same are hereby set apart to the board of regents of education of the state of South Dakota, for the exclusive benefit, support, use and maintenance of such sub-stations for experiments in agriculture as are now or hereafter may be established by law, other and different from the experiment station located at Brookings and the income from the rent thereof and the interest from the proceeds of the sale thereof is hereby granted and appropriated to the use of said board, to be expended under the direction of said board, for the sole and exclusive purpose of maintaining and supporting such sub-stations for agricultural experiments.

§ 2. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 7, 1907.

SECRET SOCIETIES

CHAPTER 231

(S. B. 36)

RELATING TO SECRET SOCIETIES

AN ACT to Prevent Fraudulent Practice in Respect to Secret Societies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Fraudulent Use of Name or Title] It is hereby made a misdemeanor for any person or firm, association, society, order or or-

ganization, or any officer, agent, representative or employe thereof, or person acting or pretending to act on behalf thereof who, in a newspaper or other publication in this state, or in any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device, without authority of the grand lodge hereinafter mentioned, fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret, fraternal association, society, order or organization which has had a grand lodge in this state for five years, or any imitation of such name or title so nearly resembling it as to be calculated to deceive, or who, without such authority, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device, directly or indirectly, advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization or in any alleged or pretended association, society, order or organization using or designated or claimed to be known by such title or imitation or resemblance thereof, or who therein or thereby offers to sell or to confer or to communicate or to give information directly or indirectly, where, how, of whom, or by what means any alleged or pretended degree or any alleged or pretended secret work, or any alleged or pretended secrets of such secret fraternal association, society, order or organization, or of any alleged or pretended association, society, order or organization designated or claimed to be known by such title, or imitation or resemblance thereof can or may be obtained, conferred or communicated, is punishable by imprisonment for not more than three years or by a fine of not more than one thousand dollars for each offense. Any such letter, writing, circular, paper, pamphlet or other written or printed notice, advertising matter or device, shall be deemed presumptive proof of the fraudulent character of the scheme therein referred to and of an intent to violate this section.

§ 2. Emergency] An emergency is hereby declared to exist, and this act shall be in full force from and after its passage and approval.

Approved March 1, 1907.

SOLDIERS' MONUMENTS

CHAPTER 232

(H. B. 101)

RELATING TO SOLDIERS' MONUMENTS

AN ACT to Empower and Authorize County Commissioners in all Organized Counties in this State to Levy Tax, Appropriate Money and Cause to be Erected, Soldiers' Monuments.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of County Commissioners] That the county commissioners in all organized counties in this state may, in their discretion and when in their judgment it is advisable, cause to be erected in the court house square, in their respective county, such monument as in their judgment seems suitable in honor of and to perpetuate the memory of all American soldiers, whether of the army or navy, who may be buried in such county, and for such purpose may levy the necessary tax and appropriate the necessary funds, not exceeding the sum of fifteen hundred dollars.

§ 2. In considering the advisability of erecting such monument, as well as in the erection thereof, said commissioners shall take into consideration the financial condition of their county and the financial ability thereof and the number of such soldiers residing or buried in such county.

§ 3. Monuments—Inscriptions on] Such monuments shall be so erected as to provide sufficient space upon which to engrave the following inscription, "In Memory of Our Noble Dead," and also the name, regiment, company and date of death of each soldier buried in such county, and it shall be the duty of such commissioners to cause such engraving to be done in a suitable manner and to keep such monument in repair and care for same, and for such purpose funds may be raised as provided in section one hereof, and all the provisions of this act shall apply to such soldiers as may have been buried in such county prior to, as well as subsequent to, the passage hereof.

§ 4. Emergency] There being no existing law upon this subject in this state, an emergency is deemed to exist, and, therefore, this act shall take effect from and after its passage and approval.

Approved February 25, 1907.

STATE UNIVERSITY

CHAPTER 233

(H. B. 72)

PROVIDING CODES AND SESSION LAWS FOR LAW DEPARTMENT OF STATE UNIVERSITY

AN ACT to Provide Codes and Session Laws for the Law Department of the
State University at Vermillion, South Dakota.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. The secretary of state is hereby instructed to send fifty (50) copies of the Revised Codes of 1903 to the department of law at the State University at Vermillion. He shall also send to said department five (5) copies of the Session Laws of each session of the legislature since statehood, whenever he has on hand five (5) or more copies in excess of the one hundred and fifty (150) copies provided by law to be kept at the capitol for the use of the members of the legislature.

§ 2. An emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Approved February 12, 1907.

SUNDAY

CHAPTER 234

(H. B. 208)

PROHIBITING THEATRICAL AND OTHER PERFORMANCES ON SUNDAY

AN ACT to Prohibit Theatrical and Other Performance on Sunday Within the
State of South Dakota and Prescribing the Punishment Therefor.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Theatrical and Other Performances] The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, sparring contest, trial of strength, or any part or parts therein and any moving picture show of the same, or any circus, equestrian, dramatic

performance or exercise, or any performance of exercise of jugglers, acrobats, club performances or rope dancers, or base ball games, where an admission fee is charged or anything of value is accepted by the manager, or any of the players or any one connected with said game as a condition of witnessing the same by the public, on the first day of the week are forbidden, and every person aiding in such exhibition, performance, exercise or game, advertisement, posting or otherwise, and every owner or lessee of any garden, building or room, place or structure, grounds or park, who leases or lets the same for the purpose of such exhibition or performance or exercise or game, on the first day of the week, or who assents to the use of the same for any such purpose, if it be so used, is guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars and not less than twenty-five dollars or imprisonment in the county jail for a period not exceeding thirty days nor less than ten days, or be subject to both such fine and imprisonment.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 25, 1907.

SUPREME COURT REPORTS

CHAPTER 235

(H. B. 96)

RELATING TO DISTRIBUTION OF SUPREME COURT REPORTS

AN ACT to Amend Section 645 of the Revised Political Code of 1903, Relating to the Distribution of Supreme Court Reports.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] Sec. 645. The copies of the state supreme court reports received by the secretary of state under this article shall be disposed of by him as follows: Two copies of each volume to the congressional library and the library of the supreme court of the United States; one copy to the library of each state and territory in the United States, to each judge of the supreme and circuit courts in this state, to the judge of the United States court for the district of South Dakota, to the clerk of the supreme court and to the attorney general,

fifty copies to the state law library, fifty copies to the law library of the State University at Vermillion, one copy to the governor, one copy to the secretary of state, one copy to the superintendent of public instruction, one copy to the State Historical Society, one copy to the commissioner of school and public lands, and one copy to the state supreme court reporter, one copy to each county judge, and one copy to the state's attorney of each county in the state, and the remaining copies shall be collected and deposited in the state law library and such volumes as are not otherwise needed may, with the approval of the judges of the supreme court, be exchanged for other books on law or equity, or reports of other states.

Approved February 20, 1907.

CHAPTER 236

(H. B. 73)

RELATING TO SOUTH DAKOTA SUPREME COURT REPORTS

AN ACT to Provide for a Set of South Dakota Supreme Court Reports for Certain State Officers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. The secretary of state is hereby instructed to place a complete set of the South Dakota Supreme Court Reports in the offices of governor, secretary of state, superintendent of public instruction, supreme court reporter, State Historical Society and commissioner of school and public lands.

Approved February 8, 1907.

SURVEYORS

CHAPTER 237

(S. B. 138)

FIXING THE FEES OF COUNTY SURVEYORS

AN ACT Fixing the Fees of County Surveyors.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1840 of the Revised Political Code of 1903, be amended to read as follows:

Section 1840. Amendment] County surveyors shall receive four dollars per day when actually employed, and mileage. The fee of the county surveyor for examining, transcribing and recording all plats of subdivisions of property into lots or blocks, as in cities, towns, cemeteries, etc., shall be five dollars for each plat, to be paid by the surveyor or person presenting the same. The fee for recording the field notes and plats of any land surveyed other than those of cities, towns, and cemeteries shall be one dollar for each plat, and ten cents for each corner established in such survey. For each mile actually and necessarily traveled in going to work, ten cents each way. For establishing each corner, twenty-five cents. For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars. For surveying county roads, per day, five dollars. Expense of necessary assistance shall in addition be paid by the party or parties requiring the work to be done.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 5, 1907.

CHAPTER 238

(S. B. 253)

RELATING TO FILING OF TOWN PLATS

AN ACT to Amend Section 1496, Article 14, of the Revised Political Code of 1903, Relative to Filing of Town Plats.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That section 1496, article 14, of the Revised Political Code of 1903, is hereby amended to read as follows:

Section 1496. Compensation of Surveyors] The surveyor who shall lay out, survey and plat any town or addition shall be entitled to receive twenty-five cents for each and every in and out lot, the same may contain, unless otherwise agreed. The county surveyor in and for the county in which such survey is made, shall receive a fee of five dollars, for examining, accepting and transcribing into a book provided for that purpose each and every plat or survey so made. The register of deeds of the county recording the same shall receive the sum of two cents for each and every lot as aforesaid, provided, that such plat has been first examined and accepted by the county surveyor.

§ 2. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 9, 1907.

TELEPHONE

CHAPTER 239

(S. B. 268)

RELATING TO TELEPHONE COMPANIES AND CREATING THE BOARD OF TELEPHONE COMMISSIONERS

AN ACT Relating to Telephone Companies, Creating the Board of Telephone Commissioners, and Defining its Powers and Duties.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Board Created] The board of telephone commissioners is hereby created, which shall consist of three members to be composed of the state treasurer, state auditor and a third member to be appointed by the governor, the latter to be a competent man who shall not be an individual owner nor interested in any way, in any firm or corporation owning or operating a telephone system in the state of South Dakota. Such board shall be a body corporate, with power to sue and be sued, shall have a seal and shall maintain an office at the state capitol. The state treasurer and state auditor shall serve without extra compensation. The member appointed by the governor shall receive a salary of twelve hundred (\$1,200) dollars a year, to be paid monthly, and his necessary traveling and other expenses while in the discharge of his duties. His term of office shall be for two years or until his successor is appointed and qualified.

§ 2. Term Defined] The term telephone company as used in this act shall mean and embrace all corporations (except municipal), associations and individuals, their trustees, lessees and receivers, that now or hereafter may own, operate, manage or control any telephone system or any part of any telephone system in this state; and all such telephone companies are hereby declared to be common carriers, and all laws, so far as applicable, now in force or hereafter enacted regulating common carriers, shall apply with equal force and effect to all such telephone companies.

§ 3. Duties of Board] The board of telephone commissioners shall have general supervision and control of all telephone lines and exchanges constructed and operated in the state of South Dakota, and it is the duty of the member of the board appointed by the governor to enquire into any complaints or unjust discriminations, neglect or violation of the laws of the state governing said telephone companies by their owner or owners, or by any of their officers, agents

or employees and to report his findings to the said board. Said board shall have power to make schedules of maximum rates, including joint rates and schedules of maximum rates to be charged by any telephone company or companies for the transmission of any message and for any service in connection therewith, and to make such changes therein from time to time as it may deem reasonable or necessary, and it may exercise any other power necessary to a proper supervision and control of such companies.

§ 4. Companies Must File Statement with Board] Every telephone company, whenever required by said board, shall, by its president, secretary or manager, file with the board of telephone commissioners, a statement, under oath, in such form as said board may prescribe, showing the following facts:

1. The total number of miles of line owned, operated or leased by it within the state; the number of miles of each separate line or division thereof, together with the number of separate wires thereon, and stating the counties through which the same extend or in which such company does business.

2. The number of miles in each county, the number of stations and number of telegraph or telephone instruments used in each county.

3. The average number of poles per mile used in constructing such lines.

4. The actual value of said wires, poles, instruments and all other property owned by it in this state, with the value of its franchises stated separately.

5. The number of offices maintained by the company in this state, and the total gross and net receipts of each office for the year ending April 30th, preceding the making of said statement.

6. The number of miles of line built by said company in this state during said year, with the number of poles and miles of wire used therein and the actual cost of such line as built.

§ 5. Copy of Franchise Must be Filed with Board] Every telephone company shall, within sixty days after the taking effect of this act, file with the board of telephone commissioners, a full, true and correct copy of every franchise and license theretofore granted to such company by any municipality in this state or assigned to it by any grantee thereof and still remaining in force; and every telephone company shall file with said board of telephone commissioners, a full, true and correct copy of every franchise or license hereafter granted to such company by any municipality in this state or assigned to it by any grantee thereof, and a true, full and correct copy of any contract or agreement hereafter entered into by said company with any municipality, telephone company or companies, within twenty days after the granting or assignment of such franchise or license, or making of such contract or agreement. Such copies shall be duly certified as

full, true and correct by the president, secretary or managing agent of such company.

§ 6. Notice of Time and Place of Hearing] Before the board of telephone commissioners shall make any schedule of maximum telephone rates, such board shall give ten days' notice of the time and place when and where, it will meet to fix and determine such rates, by publication of such notice in at least two daily papers published in this state, and any person may appear at such hearing and be heard or examined by said board touching the question under consideration no change shall be made in any schedule of maximum rates by said board until after reasonable notice of a hearing, by publication or otherwise, as said board may determine, shall have been given to the company or companies and persons interested therein and a hearing has been had thereon. The basis upon which all rates shall be fixed or charged by every telephone company shall be reasonable compensation for the service rendered, and any charge in excess thereof is hereby declared to be illegal and void.

§ 7. Companies Must File Schedules of Rates and Charges with Board] Every telephone company doing business in this state shall file with said board of telephone commissioners within sixty days after the taking effect of this act, schedules showing all rates and charges for the transmission of messages and any service in connection therewith, which has been established and which are in force at the time, between all points in this state upon its line or any line controlled or operated by it and all joint rates in which it is interested, together with a copy of all rules and regulations that in any manner effect such rates or charges; and thereafter every telephone company shall file with said board of telephone commissioners, a copy of all proposed changes in any schedule of rates or charges, at least ten days before the same shall take effect. Copies of all existing schedules shall be posted in every station of such telephone company within this state, within sixty days after the taking effect of this act, and thereafter printed copies of all new schedules shall likewise be posted in every station of such telephone company within this state, ten days prior to the time the same shall take effect, and shall be accessible for public inspection.

§ 8. Board May Compel Connection of Lines] The board of telephone commissioners shall have jurisdiction to compel the connection of different telephone lines in the state of South Dakota. Any telephone company desiring its lines to connect with any other company's line or exchange shall make application to the board of telephone commissioners. Upon receipt of such application the board of telephone commissioners shall ascertain the facts in the case and if in their judgment the public service demands said connection and the lines of the applicant are in proper condition, said telephone commissioners shall order such connection to be made, and shall apportion

the expense thereof; Provided, however, that no toll wire used exclusively for through business shall be compelled to connect except at terminal points. Nothing in this act shall be construed to prevent any telephone company from connecting its line or lines with any other telephone company's line or lines by mutual consent. Where the applicant for connection is a competing line, no company shall be compelled to connect to furnish service to points where its own lines run and where it can furnish the service itself.

§ 9. Interchange of Switching] Every telephone company shall whenever required by the board of telephone commissioners, connect its lines with the lines of any other telephone company doing business in the same vicinity, and shall afford all reasonable and proper facilities for the interchange and switching of messages between such lines, for a reasonable compensation and without discrimination, and under such rules and regulations as the board of telephone commissioners may prescribe.

§ 10. Certified Copies of Orders of Board Must be Filed with Officer or Agent] A certified copy of every order of the board of telephone commissioners affecting the rates of any telephone company shall be delivered to any officer or station agent of such company, and shall take effect and become operative twenty days after such service, unless said board shall otherwise order.

§ 11. Violation—Penalty] Every telephone company who shall violate, neglect, fail or refuse to comply with any provision of this act, or who shall violate, neglect, fail or refuse to comply with any lawful order, rule or regulation of the board of telephone commissioners of this state, shall, upon conviction thereof, be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, in the discretion of the court.

§ 12. Discrimination Unlawful] No person or telephone company shall unjustly discriminate either between persons or telephone companies in the switching, transfer or delivery of messages; nor shall such telephone company make different rates for its subscribers for the same class of service in any city or town where it is operating. All such charges and rates shall be uniform to its subscribers for the same class of service. Any person or telephone company violating any provision of this section shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars.

§ 13. Further Powers of Board] Said board of telephone commissioners shall have power to subpoena witnesses, administer oaths, take testimony and to require the production and examination of all books, papers, contracts and agreements by any telephone company or other person relating in any manner to the business or property of any telephone company.

§ 14. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 11, 1907.

CHAPTER 240

(S. B. 149)

RELATING TO TELEPHONE COMPANIES

AN ACT to Provide the Manner and Place of Record and the Notice and Effect of Trust Deeds and Mortgages of Telephone Companies.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Manner and Place of Record] Telephone companies are hereby authorized to execute and deliver trust deeds and mortgages by their proper officers, which shall constitute a lien upon the property and future acquired property, both personal and real, described in said instruments, when so provided in said trust deeds or mortgages, and such trust deeds and mortgages of telephone companies when recorded in the office of the register of deeds of the county in which the principal place of business of such company is located shall be notice of the rights of all the parties under the same, and the law of chattel mortgages shall not apply, and said mortgages and deeds so recorded shall have the same effect, both as to notice and otherwise, as to personal, and as to real estate covered by them.

Approved March 3, 1907.

TOWNS

CHAPTER 241

(S. B. 232)

RELATING TO INCORPORATED TOWNS

AN ACT to Amend Section 1426 of Chapter 15 of the Revised Political Code of 1903, Relating to Incorporated Towns.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Division of Towns Into Districts] That section 1426 of chapter 15 of the Revised Political Code of 1903 be amended to read as follows: "Section 1426. Such inspectors, when they shall have returned the statement as aforesaid, shall next proceed to divide said town into not less than three nor more than seven districts, having due regard to the equitable apportionment of the population among

he same, and the convenience and contiguity of such district; Provided, that it shall be the duty of the board of trustees of any such town to redistrict the same when requested so to do by a petition signed by a number of qualified electors of such town exceeding one-half the vote cast at the last preceding election held in such town."

Approved March 6. 1907.

TOWNSHIP BOARDS OF SUPERVISORS

CHAPTER 242

(S. B. 182)

RELATING TO MEETINGS OF TOWNSHIP BOARDS OF SUPERVISORS

AN ACT Authorizing Township Boards of Supervisors to Hold Meetings in the City Located in the Government Township, of Which They are Officers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Meetings May be Held in City—When] That in every township in this state, in which a city is located, and the land embraced in in said city, is not under the control of the township government, it shall be lawful for the board of supervisors, of such township to hold any or all its meetings in the city, that is within such government township.

§ 2. Repeal] That all acts and parts of acts in conflict with the provisions of this act is hereby repealed.

§ 3. Emergency] Whereas there is now no law authorizing the township board of supervisors to hold any meeting of said board of supervisors, without the township of which they are officers, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval.

Note by the Secretary of State: The foregoing act, having been presented to the governor of this state for his approval and not having been returned by him to the house of the legislature in which it originated, or to the secretary of state with his objections, within the time prescribed by the constitution has become a law without his approval.

D. D. WIPF,
Secretary of State.

TOWN OFFICERS

CHAPTER 243

(S. B. 261)

RELATING TO TOWN OFFICERS

AN ACT to Amend Sections 1431 and 1456 of Chapter 15 of the Revised Political Code of 1903 of the State of South Dakota, Relating to Town Officers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. That sections 1431 and 1456 of chapter 15 of the Revised Political Code of 1903 of the state of South Dakota, be amended to read as follows:

Section 1431. Officers Elected] There shall be elected at the first election, and at each subsequent election, one trustee for each district in said town, also a clerk, assessor, treasurer, and justice of the peace, who shall respectively hold their offices until the third Tuesday of March following, or until their successors are elected and qualified.

Section 1456. Officers Appointed] One overseer of highways from each road district in said town shall be appointed by the board of trustees, and subject to removal by them. The board of trustees shall superintend the grading, paving and improving of streets and the building and repairing of sidewalks.

§ 2. Repeal] All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1907.

TRESPASS OF ANIMALS

CHAPTER 244

(S. B. 274)

RELATING TO DAMAGES FOR TRESPASS OF ANIMALS

AN ACT Entitled an Act to Provide for Damages for the Trespass of Animals and for the Collection of Such Damages.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Damages May be Recovered in Civil Action] Except as in this law otherwise provided, any person or persons owning or having in his or their charge, or possession, any horses mules, cattle, goats, sheep or swine, or any such animals, which shall trespass upon the lands of another, or upon lands either fenced or not fenced, belonging to any person or persons other than the owner or owners of such animals, such person or persons owning or having in charge or possession such trespassing animal or animals, shall be liable to any party or parties sustaining such injury for all damages he, she or they may have sustained or may sustain by reason of such trespassing aforesaid to be recovered in a civil action before any court having jurisdiction thereof in the county where such damage may have occurred, and the proceedings shall be the same in all respects as in other civil actions except as herein modified, provided that no property shall be exempt except those exemptions made absolute from seizure and sale under executions issued upon judgment obtained under or by virtue of this chapter and provided further that the party or parties claiming damages under the provisions of this chapter shall bring action in the proper court to recover the same within sixty days after the infliction of such damages.

§ 2. Owner Defined] Any person occupying or cultivating land shall be considered the owner thereof in any action under the provisions of the last section.

§ 3. Must Notify Owner] The parties sustaining damages done by animals as mentioned in section one before commencing an action thereon shall notify the owner or person having in charge such offending animal or animals, of such damage, the probable amount thereof, provided he knows to whom such animal or animals belong.

§ 4. May Retain Animals Until Damages Are Paid] The person suffering damages done by animals as mentioned in section one

may retain and keep in custody such offending animals until the damages and costs are paid, or until good and sufficient security be given for the same; and whenever any animal or animals are restrained under this chapter, the person restraining the same shall forthwith notify the owner or person in whose custody the same was at the time the trespass was committed, of the seizure of said animals, providing the owner or person who had the same in charge is known to the person making said seizure.

§ 5. Judgment] Upon trial of an action under the provisions of section one of this chapter, the plaintiff shall prove the amount of damages sustained and if he has restrained and kept in custody the animals committing such damage, the amount of expense incurred for keeping the offending animals and any judgment rendered for damages, costs and expenses against the defendant shall be a lien upon the animals committing the damage and they may be sold and the proceeds applied to the satisfaction of the judgment as in other cases of sale of personal property on execution, but if it shall appear upon the trial that no damage was sustained, judgment shall be rendered against the plaintiff for cost of suit and damage sustained by defendant.

§ 6. When Owner Not Known—Notice How Made] If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, he shall be discharged and the suit may proceed as against a defendant whose name is unknown and if at the commencement of the action the plaintiff does not know the name of the owner or keeper of such offending animals, he may bring suit against the defendant unknown. In such case service shall be made by publishing a copy of the summons with a notice stating the nature of the action in a weekly newspaper, if there be one published in the county, and if not, by posting copies of the summons and notice in three of the most public places within the county, in either case not less than ten days previous to the day of trial.

§ 7. Animals May be Sold—Surplus to Whom Paid] After judgment shall have been rendered against the defendant unknown as aforesaid, the offending animals shall be sold as in other civil actions, and after the said judgment and costs have been satisfied, if there is a surplus of money, it shall be placed in the hands of the county treasurer and if the defendant does not appear and call for the same within six months from the date of sale, it shall be paid into the school fund of said county.

§ 8. Jurisdiction of Justices of the Peace] Justices of the peace shall have concurrent jurisdiction with the circuit court and county courts of the proper class of all actions and proceedings under this chapter, when the damages claimed do not exceed \$100.00.

§ 9. Attempting to Gain Possession of Animals—Misdemeanor—Penalty] Taking or attempting to take or advising or assisting in

the taking from the possession of any person having them in charge without the consent of such person, except by due course of law, any animals restrained and held by virtue of section four of this act, is hereby declared a misdemeanor and at the conviction thereof shall be punished by fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed thirty days, or by both fine and imprisonment, at the discretion of the court.

§ 10. Not Applicable—Where] Whereas that portion of the state of South Dakota lying east of the Missouri river is generally suitable for agricultural purposes and that portion of said state lying west of the Missouri river is more adapted in different portions thereof to stock raising and mining industries and whereas a general law will not apply to this subject, this act shall not be operative in or apply to that portion of the state of South Dakota lying west of the Missouri river, until by a majority vote of any county situated in said portion of the state, it shall be adopted and declared applicable to said county, at a special election hereinafter provided for or at any general election thereafter when such question may be ordered submitted to the vote of the people.

§ 11. Question May be Submitted to a Vote] At any regular or special meeting of the board of county commissioners of any county situated in that portion of the state of South Dakota lying west of the Missouri river during the year 1907, when a petition shall be presented to said board signed by a majority of the electors of said county as shown by the last vote for governor cast in said county and requesting the said board to call a special election in said county and submit to the electors thereof the question whether this law shall become operative and apply to that county, it shall be the duty of said board to immediately make an order for said election, at which such question shall be submitted, and if at any time after the year 1907 such petition shall be presented to the board of county commissioners, they shall submit such question at the next general election held in said county.

§ 12. Duty of County Commissioners] The board of county commissioners at the time of calling said election shall provide judges of the same and the election shall be held and the votes canvassed in the manner now provided by law for the holding of other elections and the canvass of the returns thereof and the county auditor of any county in which such election shall be held, shall certify the returns of the same to the secretary of state within ten days after the canvass thereof.

§ 13. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

§ 14. Emergency] There being now no adequate provision of law relating to the matter herein contained, an emergency is hereby

declared to exist and this act shall be in force and effect from and after its passage and approval.

Note by the Secretary of State: The foregoing act, having been presented to the governor of this state for his approval, and not having been returned by him to the house of the legislature in which it originated, or to the secretary of state with his objections, within the time prescribed by the constitution has become a law without his approval.

D. D. WIPF,
Secretary of State.

UNION COUNTY

CHAPTER 245

(S. B. 5)

ATTACHING LANDS TO UNION COUNTY

AN ACT Entitled an Act Attaching Certain Lands to the County of Union, South Dakota, and Submitting Such Change of Boundary to a Vote of the Electors Thereof.

Whereas, by a compact duly made and entered into between the legislatures and governors of the states of Nebraska and South Dakota, the boundary line between said states lying and being south of Union county, South Dakota, was established and declared to be in the middle of the main channel of the Missouri river as now existing; and

Whereas, the said compact between the legislatures and governors of said states was duly approved and consented to by the United States' congress, by an act duly passed by said congress and duly approved by the president of the United States on March 1, 1905; therefore

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Land Attached] That all land taken from the state of Nebraska and added to the state of South Dakota by said compact between the legislatures and governors of the states of Nebraska and South Dakota be and the same is hereby attached to and made a part of the county of Union in the state of South Dakota.

§ 2. Question Submitted] Such change of boundary in the said county of Union shall be submitted to a vote of the electors thereof at the next general election, and the board of county commissioners of said county of Union at the said general election shall give due

notice that the question of so changing and defining the boundaries of the county of Union will be submitted to the voters of said county, and said notice shall contain a description of the lands proposed to be annexed, as in this act hereinbefore described, and the proposition shall be submitted to the voters in substantially the following form:

"Shall the boundaries of the county of Union be changed so as to include the land lying and being between the existing south boundary of Union county, South Dakota, and the center of the main channel of the Missouri river as now existing?" and referring in said notice to the title and date of approval of this act.

§ 3. Repeal] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 18, 1907.

VITAL STATISTICS

CHAPTER 246

(H. B. 121)

RELATING TO VITAL STATISTICS

AN ACT Supplementary to Chapter 63 of the Laws of 1905, Relating to the Collection, Preservation and Publication of Vital Statistics.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duty of Clerks of Court] The clerks of court in the several counties of the state are hereby constituted superintendents of vital statistics for their several counties, and they are hereby empowered to enforce the provisions of chapter 63 of the laws of 1905 pertaining to the filing of birth and death reports and the issuance of burial permits.

§ 2. Powers of Clerks of Court] Said clerks of court, so acting as county superintendents of vital statistics shall have power and authority to visit any parent, physician, justice of the peace, undertaker, sexton, or other person, within their respective counties, charged with the duty of making birth, or death reports and filing the same with the clerk of courts, or securing or issuing burial or transportation permits as required by law, who shall fail in the performance of said duty, within the time prescribed by law; and shall secure such nec-

essary birth or death report, and the said clerk of courts shall be entitled to collect from the person or officer so delinquent the sum of one dollar for each said birth or death report, so delinquent and ten cents per mile for each mile necessarily traveled in the performance of said duty, but the payment of said expenses shall not be construed as relieving said delinquent officer or person from the forfeitures and liabilities prescribed by said chapter 63 of the laws of 1905.

§ 3. Certified Copies Prima Facie Evidence] Copies of any certificate or record in the office of the state superintendent of vital statistics, duly certified by the superintendent, under seal of the department of history, shall be received as prima facie evidence in any court, or proceeding in this state.

§ 4. Report—When Made] The next regular report of the superintendent of vital statistics shall be made for the period from July, 1, 1906, to December 31, 1907, and thereafter reports shall be made annually for the calendar year.

§ 5. Repeal] All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 4, 1907.

WATER WORKS

CHAPTER 247

(H. B. 160)

RELATING TO WATER WORKS

AN ACT Entitled an Act to Authorize Cities of the First Class or Cities Under Commission Having a Population of Ten Thousand or Over to Provide for the Management, Control, Operation or Extension of a System of Water Works Therein, by Means of Assessment Upon All Taxable Property Therein and the Levy and Collection of Taxes and for the Credit Upon Such Taxes of Moneys Paid by Private Consumers.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Taxation Authorized] That the city council or other governing body of any city of the first class or any city under commission having a population of ten thousand or over which owns, operates or maintains a system of waterworks for municipal or domestic purposes or both, is hereby authorized and empowered to provide for

the support, maintenance, extension and operation of such system of waterworks by means of taxation upon all the taxable property within the city.

§ 2. Appropriation Authorized—Duty of City Treasurer] That such city council or other governing body of such city is hereby authorized and empowered to make the necessary appropriation for the support, maintenance, extension or operation of such system of waterworks at the time of the making of the regular annual appropriation for each fiscal year, and may include the same in the regular annual levy of taxes for each fiscal year, and the same shall be collected, and the collection of the same shall be enforced, and the same shall be accounted for and paid over in the same manner as now provided for the collection and enforcement of collection, accounting and payment of other general taxes for such city, to the city treasurer thereof; and the same shall be kept by the city treasurer thereof in a separate fund and shall be paid out, and accounted for in the same manner as now provided for the payment of and accounting for the other funds in the hands of the said city treasurer.

§ 3. Rates—Rules and Regulations] That the city council or other governing body of such city may and is hereby authorized and empowered by ordinance to establish rates for the use and consumption of water by private consumers or patrons of such system of waterworks, and may adopt and enforce a meter system in whole or in part, and may also adopt and enforce all other rules, regulations and provisions necessary, proper or convenient for the control, operation, maintenance or management of such system of water-works.

§ 4. Official Receipts May be Accepted in Payment for Water Taxes] That such city council or other governing body of such city may by ordinance provide for the issuance of an official receipt or other voucher to private consumers or patrons of such water-works system for moneys actually paid for water consumed therefrom and may in like manner provide for the acceptance of such receipts in whole or in part payment of such taxes for water purposes by the county treasurer of the county in which such city is located or other collector of such taxes; and it is hereby made the duty of the city auditor of such city, within five days after the passage and approval of such ordinance to file a certified copy thereof in the office of such collector of taxes, and thereafter and so long as such ordinance shall remain in force and effect such collector of taxes shall comply with all lawful provisions of such ordinance relating to the collection of such taxes, and credits upon or cancellation of such water receipts and the delivery, filing or other disposition of the same and accounting therefor.

§ 5. Emergency] An emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Note by the Secretary of State: The foregoing act, having been presented

to the governor of this state for his approval, and not having been returned by him to the house of the legislature in which it originated, or to the secretary of state with his objections, within the time prescribed by the constitution has become a law without his approval.

D. D. WIPF,
Secretary of State.

CHAPTER 248

(H. B. 246)

RELATING TO WATER-WORKS

AN ACT for the Repeal of an Act Entitled "An Act Entitled an Act to Empower Cities of the First Class to Sell, Lease or Otherwise Dispose of Any System or Part of a System of Water-Works, Constructed and Owned by Such City," being Chapter 176 of the Session Laws of 1905.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Repeal] That an act entitled, "An act entitled an act to empower cities of the first class to sell, lease or otherwise dispose of any system or part of a system of waterworks constructed and owned by such city," being chapter 176 of the Session Laws of 1905 be, and the same hereby is repealed.

Approved February 26, 1907.

CHAPTER 249

(S. B. 279)

AUTHORIZING THE COUNTY COMMISSIONERS TO ACCEPT FOR USE AS PUBLIC RECORDS BOOKS OF WATER USERS' ASSOCIATIONS

AN ACT Entitled an Act Authorizing the County Commissioners of Counties to Accept for Use as Public Records, Books of Water Users' Associations Containing Printed Copies of Their Articles of Incorporation and Forms of Subscription to Stock and Regulating the Charges for Recording the Stock Subscription.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Books May be Accepted] The county commissioners of any county in which there has been a water users association organized in conformity with the requirements of the United States under the reclamation act of June 17, 1902 and which, under its articles of incorporation is authorized to furnish water only to its stockholders,

are hereby authorized to accept from such Water Users Association, books for public record, containing printed copies of their articles of incorporation and forms of subscription to stock and to use such books for recording the stock subscriptions of such association.

§ 2. Charges for Recording Stock Subscriptions] The charges for the recording of said stock subscriptions shall be made on the basis of the number of words actually written therein.

§ 3. Emergency] An emergency is hereby declared to exist and this act shall be in effect from and after its passage and approval.
Approved March 7, 1907.

WEEDS

CHAPTER 250

(H. B. 21)

PROVIDING FOR THE DESTRUCTION OF WEEDS UPON PUBLIC HIGHWAYS

AN ACT to Provide for the Destruction of Weeds upon Public Highways.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Weeds Must be Destroyed] It shall be the duty of any person owning, leasing or occupying lands abutting upon public highways to destroy all weeds growing upon the one-half thereof immediately abutting on his said lands, within a time to be fixed by the board of supervisors of the township, or the county commissioners of any county not wholly organized into civil townships. The board of supervisors of any township or the board of county commissioners of any county not wholly organized into civil townships, may, at any regular or special meeting, fix a time for the destruction of weeds in public highways. When any such board shall so fix a time for the destruction of weeds in highways it shall be the duty of the overseer of highways in case any such person owning, leasing or occupying land shall fail to destroy the weeds within the time fixed to notify the owner or lessee or occupant of any lands abutting on any public highway to destroy the weeds growing upon the one-half thereof abounding on the lands so owned, leased or occupied by him, which notice may be given by mailing a copy to him or leaving a copy personally with him.

§ 2. In Case of Failure to Comply] In case said owner shall fail for a week after service of notice to cut said weeds, it shall be the

duty of the overseer of highways to immediately cut and destroy the same, for which he shall receive compensation at a rate to be fixed by the board of supervisors or board of county commissioners. He shall receive compensation for serving such notices at a rate to be fixed by such board. Such compensation for serving notices and cutting and destroying the weeds shall be audited by the board of supervisors or board of county commissioners after sworn return thereof by the overseer of highways, and said overseer of highways shall be paid therefor out of the township or county funds.

§ 3. Duty of Boards] The amounts so fixed and paid shall be certified by the board of supervisors or the board of county commissioners to the county auditor and shall by him be placed on the tax list in a separate column headed "For Destruction of Weeds in Highways," and shall be and become a tax on said land and a lien thereon as in the case of ordinary taxes, subject to all the penalties thereof, and shall be collected as other taxes. The entry on the tax list shall be prima facie evidence of all regularities in the procedure.

§ 4. If any land be unoccupied along the line of any highways on which it becomes the duty of the overseer of highways to cut and destroy the weeds, no notice need be given to cut said weeds save only by mailing to the owner at his last known place of residence, or by publication of the general notice to cut and destroy such weeds for one issue in a weekly newspaper published in the county.

Approved February 18, 1907.

WOLF BOUNTY

CHAPTER 251

(H. B. 70)

RELATING TO WOLF BOUNTY

AN ACT Entitled an Act Amending Section 3121 of the Political Code of 1903, as Amended in Chapter 177 of the Session Laws of 1905, Providing Amount of Appropriation for the Payment of Bounty on Wolves, and Mountain Lions.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Appropriation] That section 3121 of the Session Laws of 1905 be amended to read as follows:

Section 3121 of the Political Code of 1903 as amended in chapter

177 for the purpose of carrying out the provisions of this article there is hereby appropriated out of the general fund the sum of thirteen thousand dollars for each fiscal year, or so much thereof as may be necessary, and not otherwise appropriated.

Provided, that no part of said sum of thirteen thousand dollars appropriated annually as aforesaid shall be paid out by the treasurer, nor shall the state auditor draw his warrants thereon until thirty days after the close of each fiscal year have elapsed, and the state auditor shall draw his warrant upon such fund so appropriated, and such fund so appropriated shall be paid out to each holder of any certificate or certificates for wolves, mountain lions or coyotes killed during the preceding year in the proportion that the certificate or certificates of each holder bear to the total amount of certificates issued.

Provided, however, that the amount per scalp so paid shall not exceed the amount per scalp provided for in section 3113, nor shall the state ever be liable for any further amount so paid; and

Provided, further, that the total amount paid out for such bounties during any one year shall not exceed the sum of thirteen thousand dollars.

Provided, further, that the certificate holders shall accept the above specified pro rata in full payment for the aforesaid certificate or certificates, and

Provided, further, that any portion of the above mentioned thirteen thousand dollars which may not be used shall revert to the general fund of the state treasury.

§ 2. Repeal] All acts and parts of acts inconsistent herewith are hereby repealed.

Note by the Secretary of State: The foregoing act, having been presented to the governor of this state for his approval, and not having been returned by him to the house of the legislature in which it originated, or to the secretary of state with his objections, within the time prescribed by the constitution has become a law without his approval.

D. D. WIPF.
Secretary of State.

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